THE INDIAN STAMP ACT.

In the Press.

The Court-Fees Act, VII of 1870

AND

The Suits Valuation Act, VII of 1887

WITH NOTES.

Second Edition.

By the same Author.

THE
INDIAN STAMP ACT

NO. II OF 1899

AS AMENDED BY ACTS VI OF 1900, XV OF 1904,
V OF 1906, VI OF 1910, I OF 1912,
IV AND X OF 1914

WITH

AN INTRODUCTION, NOTES, COMPARATIVE TABLES OF SECTIONS AND ARTICLES OF STAMP ACTS, APPENDICES CONTAINING REDUCTIONS AND REMISSIONS STAMP RULES, ETC.,

ALSO

TABLES FOR CALCULATION OF DUTIES, APPENDICES CONTAINING REPEALED STAMP REGULATIONS AND ACTS, ENGLISH STAMP ACT OF 1891 AND NOTIFICATIONS OF THE GOVERNOR-GENERAL IN COUNCIL, UNDER THE OLD ACTS, ETC.,

BY

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PREFACE TO THE

In the preparation of this Edition the book has been carefully revised. The Amendment Acts passed and the cases reported since the publication of the last Edition have been included.

The author thankfully acknowledges his obligations to the Board of Revenue, Madras, for copies of their Proceedings on Stamp Law furnished to him.

The thanks of the author are due to Mr. S Subramania Aiyar, High Court Vakil, for help in passing the proofs through the press and in preparing the Table of cases and the Index.

MADRAS,
August 1916.

K. J.

PREFACE TO THE FIRST EDITION.

THE Stamp Law of British India extending over a century is contained in a number of Regulations and Acts, and in Rules and Orders made by Notifications of the Governor-General in Council. This book deals with the present Stamp Act and its relations to the repealed Act I of 1879 as amended by subsequent Acts, and also collects all the previous Regulations and Acts, and Rules and Orders and presents them in an accessible form, as it has often to be ascertained whether documents executed while any of the previous Stamp Laws were in force are properly stamped or not.

The alterations and additions introduced into the present Act are throughout printed in italics, so that the points of difference between the present Act and Act I of 1879 may be readily seen. With respect to the important changes, the provisions of the two Acts are compared and reasons for the changes are given, in some cases as they are mentioned in the Statement of Objects and Reasons, the Report of the Select Committee or the Proceedings of the Legislative Council, and in other cases where they are not so mentioned the changes are independently explained by reference to decisions of Courts or other sources Under each section of the Act, the corresponding section of Act I of 1879 is noted immediately after the text of the section. In the notes the corresponding sections of the earlier Acts and of the English Acts are sometimes referred to and compared. But for an easy and comprehensive comparison of the provisions of the present Act and the old Acts and also of the English Stamp Acts, Comparative Tables carefully prepared are given

All the important decisions of the High Courts are cited and the rulings of the Chief Controlling Revenue Authorities are added by way of illustration. English cases are also freely cited, as the provisions of the Indian Acts are mainly taken from the English Acts and as the English decisions often throw much light upon the character of documents and the provisions of the Indian Act The principles of the decisions have been given as far as possible, and the facts of cases are concisely stated consistently with accuracy and every effort has been made to arrange the decisions under proper headings to bring out clearly their application. Care has also been taken to show how far the decisions in particular cases under the old Acts are now applicable. A special feature of the book is the mention of the date of the decision of each case cited and this plan has been adopted on the ground of its being advantageous; for instance, the knowledge of the date of a decision generally saves the trouble of further reference to the reports for ascertaining whether the decision was given before or after the passing of an Act of another decision of the same or another Court

The first Schedule to the Act is treated on the same plan as the body of the Act. The exemptions instead of being placed in a separate Schedule as in the Act of 1879 have now been conveniently brought in by the Legislature under the Articles in the Schedule to which they refer Reference is given in all cases as in the body of the Act to the corresponding Articles of Schedules I and II of Act I of 1879, and to the exemptions and reductions made by Notifications of the Governor-General in Council which have been reproduced in the present Act The Comparative Tables already referred to will be found useful for the purpose of ascertaining the corresponding articles relating to duties and exemptions

under the new Acts and the old Acts. For facility of reference, the exemptions and reductions made by Notifications under the present Act, though separately printed as Appendix I to the Act, are also brought into the Schedule under the heading of 'Further Exemptions' at the end of the articles to which they refer.

The Introduction to the Act briefly explains the origin and nature of the Stamp Law and gives a sketch of the Stamp Law of British India as contained in the various Regulations and Acts from the earliest times. * * * *

The book contains besides, (1) ten Comparative Tables of the sections and articles of all the five principal Indian Stamp Acts from 1860 and of the sections of the English Stamp Acts of 1870 and 1891; * * * * (3) a table of cases cited; (4) four tables of *advalorem* duties worked up to a high figure and covering almost the whole range of instruments chargeable with such duties and placed immediately after the Act, a reference to which would make it easy for one to ascertain directly without the trouble of calculation what the particular duty on an instrument is; (5) another table showing the values of different stamps issued and sold to the public; (6) nine Appendices. * * *

The Author thankfully acknowledges his obligations to Mr. V. Krishnaswami Aiyar, High Court Vakil, for useful suggestions made in the course of the preparation of this book. His thanks are also due to the Secretaries of Departments of Land Revenue and Separate Revenue, Board of Revenue, and the Superintendent of Stamps, Central Provinces, for their having furnished him with copies of Rulings of the Chief Controlling Revenue Authority in Madras and Central Provinces and of Stamp Rules and other papers relating to Stamp Law in those Provinces and to the Commissioner of Stamps, North-Western

Provinces and Oudh for Stamp Rules furnished, and to the First Assistants to the Residents of Hyderabad and Mysore for information supplied regarding the Stamp Law within the jurisdiction of the Residents.

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K. J.

April 1900.

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LIST OF ABBREVIATIONS.

Ad. & E. *or* A. & E. ...	Adolphus and Ellis's Reports, (K. B.)
Add. on Cont.	Addison on Contracts.
A. C. J.	Appellate Civil Jurisdiction.
App.	Appendix.
A. G.	Assam Gazette.
Anon....	Anonymous.
App. Cas.	Law Reports, Appeal Cases.
Art.; Arts.	Article; Articles.
B. & A. *or* Ad.... ...	Barnewall and Adolphus's Reports, K. B.
B. & Ald.	Barnewall and Alderson's Reports, K. B.
B. & C.	Barnewall and Cresswell's Reports, K. B.
B. & P.	Bosanquet and Puller's Reports, C. P.
Beav....	Beavan's Reports.
Beng. L. R. *or* B L.R. ...	Bengal Law Reports.
B. G....	Bombay Gazette.
Bing....	Bingham's Reports, C. P.
Bing., N. C.	Bingham's New Cases, C. P.
Bom.	Bombay.
Bom. L. R.	Bombay Law Reporter.
Bom. P. J.	Bombay Printed Judgments
Bom. H. C. R.	Bombay High Court Reports.
Bouvier	Bouvier's Law Dictionary.
Br. & Bing.	Broderip and Bingham's Reports, C. P.
Burr....	Burrow's Reports, K. B.
Burr. S. C.	Burrow's Settlements Cases.
C., *or* Cap., *or* Ch. ...	Chapter.
Cal. Bd. Cir.	Calcutta Board's Circular.
Cal. Gaz.	Calcutta Gazette.
Camp.	Campbell's Reports, N. P.
Cal. H. C. Cir.... ...	Calcutta High Court Circular.
C. L. J.	Calcutta Law Journal.
C. W. N.	Calcutta Weekly Notes.
C. B.	Common Bench Reports, C. P.
C. B., N. S.	Common Bench New Series, C. P.
C. L. R.	Calcutta Law Reports.
C. P.	Common Pleas, *or* Central Provinces.
C. & K.	Carrington and Kirwan's Reports, N. P
C. & M. *or* Cr. & M. ...	Crompton and Meeson's Reports, Ex.

C. M. & R.	Crompton, Meeson and Roscoe's Reports, Ex.
C. & P.	Carrington and Payne's Report, N. P.
C. C. R.	Crown Cases Reserved.
Cl. & Fin.	Clark and Finnelly's Reports, House of Lords.
Cir. *or* Circ.	Circular.
Civ. Rul.	Civil Rulings.
Comm.	Commissioner *or* Commissioners.
Crl. Rul.	Criminal Rulings.
Dea. & Ch.	Deacon and Chitty's Reports.
De. Gex. M. & Gr. ...	DeGex, Macnaghten and Gordon's Reports.
Dow. & L.	Dowling and Lownde's Reports.
Dow. & Ry. *or* D. & R. ...	Dowling and Ryland's Reports, K. B
East	East's Reports, K. B.
E. & B.	Ellis and Blackburn's Reports, Q. B.
Esp.	Espinasse's Reports, N. P.
Ex. *or* Exch.	Exchequer Reports.
F. St. G. G.	Fort St. George Gazette.
Govt.	Government,
G. O.	Government Order.
H. A. D.	Hyderabad Assigned Districts.
H. & C.	Hurlstone and Coltman's Reports, Ex
H. & N.	Hurlstone and Norman's Reports, Ex.
H. L. C.	House of Lords Cases.
I. A.	Indian Appeals.
I. C.	Indian cases.
I. G.	Gazette of India.
I. G. L.	India Government Letter.
I. G. N.	India Government Notification.
I. G. O.	India Government Order
I. G. R.	India Government Resolution.
I. L. R., All.	Indian Law Reports, Allahabad Series.
I. L. R., Bom.	„ „ Bombay „
I. L. R., Cal.	„ „ Calcutta „
I. L. R., Mad.	„ „ Madras „
I. C. A.	Indian Contract Act.
In. Rev.	Inland Revenue.
Ir. C.	Irish Cases.
L. J.	Law Journal.
L. J., C. P.	Law Journal, Common Pleas.
L. J., Ch.	„ Chancery.
L. J., Ex.	„ Exchequer.
L. J., Q. B.	„ Queen's Bench.
L. J., M. C.	„ Magisterial Cases.
L. R.	Law Reports.
L. R., App. Cas. ..	Law Reports, Appeal Cases.
„ Ch. D.	„ Chancery Division.

L. R., C. P.	Law Reports, Common Pleas.
L. R., E. & I. A. .. ,,	English and Irish Appeals.
,, Eq. ... ... ,,	Equity.
,, Ex, ... ,,	Exchequer.
,, Ex D. ... ... ,,	Exchequer Division.
,, H. L. C. .. ... ,,	House of Lords' Cases.
,, I. A. ... ... ,,	Indian Appeals.
,, Q. B. ... ... ,,	Queen's Bench.
,, Q. B. D.... ... ,,	Queen's Bench Division.
Ld. Raym.	Lord Raymond's Reports, K. B.
L. T. N. S.	Law Times, New Series.
Lofft	Lofft's Reports, K. B.
M. & G.	Manning and Granger's Reports, C. P.
M. & K.	Mylne and Keene's Reports, Ch.
M. & M.	Moody and Malkin's Reports, N. P.
M. & R.	Moody and Robinson's Reports, N P.
	or
	Manning and Ryland's Reports, K. B.
M. & S.	Maule and Selwyn's Reports, K. B.
M. & W.	Meeson and Welsby's Reports. Ex.
Mac. & G.	Macnaghten and Gordon's Reports, Ch.
M. I. A.	Moore's Indian Appeals.
Mod. & Rob. *or* M. & R. ...	Moody and Robinson's Reports, N. P.
M. L. J.	Madras Law Journal.
M. L. J. R.	Madras Law Journal Reports.
M. L. T.	Madras Law Times.
Mad. B. P.	Madras Board's Proceedings.
Mad. G O.	Madras Government Order.
Mad. H. C. R.	Madras High Court Reports.
Mad. Jur.	Madras Jurist.
M. W. N.	Madras Weekly Notes.
N. & M.	Neville and Manning's Reports. K. B.
N. W. P. H. C. R. ...	North-Western Provinces High Court Reports.
Notn.	Notification.
O. C.	Oudh Cases.
O. C. J.	Original Civil Jurisdiction.
Peake	Peake's Reports.
P. C.	Privy Council.
P. J.	Printed Judgments.
P. L. R.	Punjab Law Reporter.
P. R.	Punjab Record.
P. W. R.	Punjab Weekly Reports.
Pt.	Part.
Q. B.	Queen's Bench Reports.
R. *or* Rev.	Revenue.
Ref.	Reference.

R. R.	... Revised Reports.
Rul.	... Rulings.
Ry. & M. ...	... Ryan and Moody's Reports, N. P.
R. & R. ...	... Russell and Ryan's Reports.
S. *or* Sec. ...	... Section.
Sc.	... Scott's Reports. C. P.
S. C.	... Same Case.
Salk.	... Salkeld's Reports, K. B.
Sc. N. R. ...	... Scott's New Reports, C. P.
Sc. L. R. ...	... Scottish Law Reporter.
Sc. Sess. C. ...	... Scottish Sessional Cases.
S. R.	... Separate Revenue.
Steph. Comm. ...	... Stephen's Commentaries on the laws of England.
Stark.... ...	... Starkie's Reports, N. P.
Strange ...	... Strange's Reports, K. B.
Suth. W. R. ...	... Sutherland's Weekly Reports, (Bengal).
Taunt.... ...	... Taunton's Reports, C. P.
T. R.	... Term Reports (Durnford and East, K. B,)
Tomlin. ...	... Tomlin's Law Dictionary.
T. P. A. ...	.. Transfer of Property Act.
Tyrw. ...	... Tyrwhitt's Reports, Ex.
Tyr. & Gr. ...	... Tyrwhitt and Granger's Reports, Ex.
Ves.	... Vesey's Reports.
W. H. & G. ...	... Welsby, Hurlstone and Gordon's Reports, Ex.
Wharton. ...	.. Wharton's Law Lexicon.
W. R. ...	... English Weekly Reporter.
Y. & J. ...	.. Younge and Jervis' Reports, Ex.

ADDENDA.

Page 37, *add* to foot-note (*b*): "*The Collector of Rangoon* v. *Maung Aun Bu*, 33 I. C. 920."

,, 111, *add* at the end of first para.: "An instrument which ran as follows:—'We have this day received from you Rs. 25,000 in cash. Interest thereon has been fixed at the rate of As. 12 per cent. per mensem. The said interest is to be paid every month as it accrues due; and the period fixed in respect of the above written amount is three years,' was held not to be a promissory-note falling under the absolute prohibition of s. 35 of the Act. *Pratapchand Gulabchand* v. *Purshotamdas Mahji*, 18 Bom. L. R. 124; 33 I.C. 366."

,, 140, *add* after the word "here", line 11 from top: "where a decree passed by a Munsif under s. 17 of the Bundelkhund Alienation of Land Act, II of 1903, had been sent to the Collector who executed a mortgage deed on behalf of the judgment debtors, it was held that the deed though executed by the Collector was one executed in favour of the mortgagee by the Collector on behalf of the mortgagor and was not therefore one which had been executed by, in favour of or on behalf of the Government and hence was not exempt from duty under s. 3 of the Act; *Somwarpuri* v. *Matabadal*. 14 A. L. J. R., 422."

,, 192, *add* to foot-note (*a*): "*Ram Singh* v. *Perumal*, 32 I. C. 582."

,, 244, *add* at the end of first para.: "A claim for the value or return of goods delivered to defendant cannot be proved by an unstamped agreement between the parties: but the plaintiff can prove the fact of delivery and state that he got nothing in return and the onus is then shifted on to the defendant for showing his right to detain the goods. *Chami* v. *Ana Pattar*; 33 I. C. 661."

,, 252. *add* to foot-note (*b*): "*Ram Singh* v. *Perumal*, 32 I. C. 582."

,, 268, *add* to foot-note (*b*): "*Jagannath Rahatgir* v. *Deokinandan*, 29 I. C. 671."

,, 299, *add* at the end as a new para: S 44 of the Stamp Act is only intended to give a right to an innocent party, not guilty of any default in the matter of the proper stamping of a document; to recover the duty and panalty, he is obliged to pay, from the person or persons guilty of default. That section is not intended to enable one of several persons, who were under a common duty to pay the proper stamp duty, on a document in proportionate shares,

to claim from the others contribution in respect of the amount of the stamp duty and penalty which he has been compelled to pay in full, owing to their common default. *Raman Chetty* v. *Nagappa Chetty*; 2 L. W. 1024=31 I. C. 285."

Page 331, *add* after the word "instrument", line 7 from top: "Sections 56 and 57 of the Indian Stamp Act empower the High Court to decide questions relating to instruments already in existence and which have been made the subject of action by the Collector acting under sections 31, 40 and 41 of the Act. They do not empower the Court to give an opinion upon a deed which may or may not come into existence hereafter; Ref. I. L. R. 37 All. 125; 13 A. L. J. 47; 27 I. C. 501."

„ 362, *add* at the end of footnote (*a*): *Crown v. Ramjilal*, 21 P. R. (Cr.) 1915; 8 P. W. R. (Cr.) 1915; 31 I. C. 643.

„ 378, *add* at the end of first para: "Entries in account books are not liable to stamp duty and are admissible in evidence for what they are worth; *Ramalayal v. Kumar Gangadhar Bogla* 29 I C. 943."

„ 422, *add* after the 2nd line from top. "Where parties executed a reference on stamped paper to a named arbitrator and before he had accepted the reference, added and initialled the name of a co-arbitrator in the reference, it was held that the reference being incomplete before the named arbitrator had consented to act under it, the addition of the name of the co-arbitrator in the instrument did not convert the former reference into a second instrument within the meaning of s. 14 of the Act. *Das* v. *Khiman Mal.* 29 I. C. 602=8 S. L. R 302."

„ 480, *add* after the word "sent" in line 7 from top: "But the Bombay High Court held that where the lessee agreed to pay to the lessor Rs. 100 as rent plus Rs. 16-8 on account of Government assessment, the latter did not form part of the profit and therefore the stamp duty was leviable only on Rs. 100, the annual rent. *In re Gangaram Narayan Das Teli*, (1915) I. L. R. 39 Bom. 434."

„ 482, *add* at the end: "An agreement for a lease whereby no rent is reserved and no premium paid or money advanced is not included in the schedule and does not require a stamp. *Sunder Kuer* v. *Emperor*, 20 C. W.N. 923.

CORRIGENDA.

Page 106, line 8 from top, after the word "note" *add* "not"
,, 129, line 14 from bottom, after the word "that" *add* "the"
,, 133, line 3 from bottom, after the figures "(1898)," *add* "8"
,, 180, foot-note, (*c*), *for* "29 Bom" *read* "19 Bom"
,, 190, line 4 from bottom, *for* "as" *read* "is"
,, 208, line 10 from top, *for* "of" *read* "on"
,, 210, line 2 from top, *for* "excluding" *read* "exceeding"
,, 242, line 4 from top, *for* "recently till" *read* "till recently"
,, ,, foot-note (*f*), *for* "L. R. H." *read* "L. R. 4 H. L."
,, 247, line 12 from bottom, *for* "is" *read* "in"
,, 256, foot-note (*g*), "*for* 23 Bom" *read* "24 Bom"
,, 263, line 21 from top, *for* "Punjab" *read* "the Punjab"
,, 302, line 15 from top, *for*, "some" *read* "same"
,, 338, foot-note (*a*), *for* "3 All" *read* "2 All"
,, 342, foot-note (*c*), *for* "Rev. 157 of 1833" *read* "Rev. 157 of 1893"
,, 359, foot-note (*a*), *for* "ibid" *read* Queen Empress *v.* Soma Sundaram Chetty, *supra*,
,, 398, line 8, *for* "Exemption (*b*)," *read* "Exemption (*a*)"
,, 409, line 1, from top, *for* "on" *read* "or"
,, 411, line 12, from bottom *omit* the words "or agreed to be subsequently given"
,, 413, line 19 from bottom, *for* "only" *read* "not"
,, 423, line 6 from bottom, *for* the figures "28" *read* "27"
,, 445, foot-note (*b*), *for* "1 Q. B. 355" *read* "1 Q. B. 335"
,, 479, line 14, from top, *for* "they" *read* "the"
,, 533, line 1, *for* "occuring" *read* "occurring"
,, 548, line 1, *for* "Fees-certificate" *read* "Fees-receipt"

TABLE OF CASES CITED.

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TABLE OF RULINGS OF CHIEF CONTROLLING REVENUE AUTHORITIES.

COMPARATIVE TABLES.

Table showing the sub-sections of Section 3 of Acts I of 1879 and XVIII of 1869, corresponding to the sub-sections of Section 2 of Act II of 1899.

Act II of 1899.	Act I of 1879.	Act XVIII of 1869.
Section.	*Section.*	*Section.*
2 (1) ...	3 (1) ...	...
,, (2) ...	, (2) ...	3 (3)
,, (3) ...	...	..
,, (4) ..	,, (3) ...	3 (4)
,, (5) (*a*) ...	,, (4) (*a*) ...	,, (5)
,, (5) (*b*), (*c*), ...	,, (4) (*b*), (*c*), ...	..
,, (6) ...	,, (5) ...	...
,, (7) ...	,, (6) ...	,, (8)
,, (8) ...	,, (7) ...	...
,, (9) .	,, (8) ...	,, (9)
,, (10) ...	,, (9) ...	,, (11)
,, (11) ...	,, (10) ...	...
,, (12) ...	...	...
,, (13) ...	...	,, (14)
,, (14) ...	...	...
,, (15) ...	,, (4) ...	,, (22)
,, (16) ...	,, (12) ...	,, (15)
,, (16 A) ...	...	...
,, (17) ...	,, (13) ...	,, (18)
,, (18) ...	,, (14) ...	,, (21)
,, (19) (*a*) ...	,, (15), para. 1 ...	,, (23)
,, ,, (*b*) .	,, (15), para. 2 ...	...
,, ,, (*c*) ...	,, (15), para. 2 ...	...
,, (20) ...	,, (15), paras. 3 & 4 ...	...
,, (21) ...	,, (16) ...	,, (24), (29),
,, (22) ..	...	,, (25)
,, (23) (*a*), (*b*), ...	,, (17) (*a*), (*b*), ...	Art. 7, sched. II
,, (23) (*c*), (*d*), ...	,, (17 (*c*), (*d*), ...	...
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Table showing the Sections of the old Indian Stamp Acts and of to the Sections of the

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6 ...	7, para 2 ...	14 ...	...
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8 ...	7 B ...	...	...
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9 (*b*) ...	...	...	...
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14 ...	13 ..	...	...
15 ...	14 ...	...	...
16 ...	15 ...	Sched. II, Art. 16	Sched. A, Arts. 3, 37
17 ...	16 ...	...	...
18 ...	17 ...	24 (c) ...	...
19 ...	18 ...	8, 31 ...	11
20 ..	19, 20 ...	10 ...	...
21 ...	21 ...	...	...
22 ...	22 ...	...	..
23 ...	23 ...	9 ...	...
23A ...	...	...	...
24, para. 1 ...	24 ...	34 (b) ...	...
,, para. 2 ...	...	...	...
,, para. 3 ...	...	34 (b) ...	...
,, para. 4 ...	...	...	...
25 (a) ...	25 (a) ...	...	...
25 (b) ...	25 (b) ...	} 12 ...	Sched. A, Art. 24
25 (c) ...	25 (c) ..		
26, para. 1 ...	26 ...	11 ...	27
,, paras. 2 & 3 ...	...	..	...
27 ...	27 ...	34 (a) ...	51 (1)
28 ...	28 ...	...	...
29 ..	29 ..	6 ...	29
30 ...	58 ...	27 (a) ...	29
31 ..	30 ...	39 ...	19
32 ...	31 ..	39 ...	19
33 ...	33 ...	22-23 ...	...

* The sub-sections of the sections of the old Acts corresponding to the sub-sections of this Section are given in a separate Table in the preceding page.

the English Stamp Acts of 1870 *and* 1891 *corresponding Indian Stamp Act*, II *of* 1899.

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...	...	...
...	...	...
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18 ...	...	...
...	...	...
4 ...	6 (1) ...	...
5 ...	...	...
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...	7 (1) ...	3 (1)
...	...	...
...	...	...
...	14 ...	11
...	15 (1) ...	15 (1)
...	15 (2) (a) ...	15 (3) (a)
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...	12 ...	6 (1)
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35 ...	10 ...	5
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15 ...	...	...
...	18 (1) and 20 ...	12 (1), (2), 6 (*c*)
...	18 (2), (3), (5) ..	12 (3), (4), (5), (6) (a), (b)
...	...	...

Table showing the Sections of the old Indian Stamp Acts and of to the Sections of the

Act II of 1899.	Act I of 1879.	Act XVIII of 1869.	Act X of 1862.
Section.	*Section.*	*Section.*	*Section.*
34 ..	...	...	...
35, para. 1 ...	34, para. 1 ...	18 (a) ..	14
35, proviso (a) ..	34, proviso (1) ..	20, paras. 1, 2, 3 & 28.	17 (1), 22
35, proviso (b) ..	...	...	...
35, proviso (c) ..	...	Art. 11, proviso, Sched. II.	Art. 1, Note, Sched. A.
35, proviso (d) ..	34, proviso (2) ..	18 (b) ...	14, proviso
35, proviso (e) ..	...	...	...
36 ..	34, proviso (3) ..	...	...
37 ...	...	...	...
38 (1) ..	35, para. (1) ..	21 (b), (c) ..	17 (2)
38 (2) ..	35, para. (2) ..	22 & 23 ...	...
39 ..	36 ...	...	...
40 (a) (1) ...	37 (a) & (b), 37, last para. ...	24 (a), para. (2) ...	...
40 (b) (1) ..		24 (a), para. ... & 28	15 cl. 1 & 2 & 22
40 (1) proviso ..	37, para. 4 ...	...	...
40 (2) ...	37, para. 5 ...	24 (d) ...	...
40 (3) ...	37, para. 2 ...	24 (a), para. 2 ...	...
41 ..	38 ...	24 (b), 28 ..	15, cl. (1)
42 (1) ..	39, para. 1 ..	20, para. 4, 25 para 1.	17, cl. (2)
„ (2) ..	39, para. 2 ...	20, p. 6, 21 (a), (b), 24 (d), 25 pp. 1 & 2	16
„ proviso (a) „ (b)	39, paras. 3 & 4 ..	...	...
43 ..	40 ..	22, 24 (a) ...	...
44 (1) (2) ...	41 ..	...	...
44 (3) .	...	..	...
45 (1) ..	42 ...	42 ...	15 (b)
45 (2) ...	...	..	...
46 (1) ...	43, para. 1	25 para. (3) ...	21
46 (2) ...	43, para. 2 ...	...	...
47 ...	44 ..	26 ...	24
48 ..	—	...	...
49 ..	51 (a), (b), (c), (d), proviso (a)	45 & 46 ...	50, cl. (1).
50 ..	51, proviso (b) .	45 ..	50, cl. (2)
51 ..	...	..	...
52 ...	52 ...	...	...
53 ..	53 ...	45 ..	50 (3)
54 .	54 ..	15 .	...
55 .	...	.	...
56 (1) ...	...	40, para. 1 ...	15 (5)
56 (2) & (3) ..	45 ..	...	...
57 ...	46 ...	41 (a) & (b) ...	...
58 .	47 ...	41 (c) ...	...

the English Stamp Acts of 1870 *and* 1891 *corresponding Indian Stamp Act, II of* 1899—*(contd.)*.

Act XXXVI of 1860.	English Stamp Act, 1870 (33 & 34 Vic. c. 97.	English Stamp Act, 1891 (54 & 55 Vic. c. 39).
Section.	*Section.*	*Section.*
...	...	...
12 ...	17 ...	14 (4)
13 (4) and last para. ...	16 (1)	14 (1)
...	...	...
...	...	...
12, proviso ..	17 ..	14 (4)
...	...	...
...	...	...
...	...	...
13 (5) ...	16 (2) ...	14 (2)
...	...	..
...	...	...
..	..	...
13 (1) & (2) & last para.	15 (1) ..	15 (1)
...	...	...
...	...	...
...	...	...
13 ..	...	...
13 (5) ...	16 (3) ..	14 (3)
...	...	...
...	...	...
...	...	...
...	...	...
...	...	...
13 (3) ...	15 (2) (*b*) ...	15 (3) (b)
...	...	...
13 (8) ..	...	...
...	...	...
...	54 (2), (3) ...	38 (2), (3)
...	...	...
32, cl. (1) ...	...	...
32 (2) ...	...	...
...	...	...
...	...	...
...	...	...
...	..	...
...	...	...
13 (3) ...	...	...
...	...	...
...	19 (1), (2) ...	13 (1), (2)
...	...	...

Table showing the Sections of the old Indian Stamp Acts and of to the Sections of the

Act II of 1899.	Act I of 1879.	Act XVIII of 1869.	Act X of 1862.
Section.	*Section.*	*Section.*	*Section.*
59 ...	48 ...	41 (d) ...	...
60 ...	49 ...	...	...
61 ...	50 ..	...	...
62 (1) ..	61 ..	29, 30 ...	3, 11
„ proviso ..	61, proviso ...	...	23
„ (2) ..	...	...	...
63 ...	62 ..	31, last para. 33, p. 2.	8, 11
64 (a) & (b) ...	63 ...	34 (c), 35 ...	51
„ (c) ...	...	...	...
65 ...	64 ...	27 (b) ...	29
66 ...	65 ...	...	...
67 ...	66 ...	32 ...	12, 25
68 (a) ... }			
„ (b) .. }	67, para. 1 ...	...	13
„ (c) ...	„ „ 2 ...	...	...
69 ..	68 ...	48, para. 3 ..	48
70 (1) ...	69, para. 1 ..	43 ...	52
„ (2) ...	„ „ 2 ...	...	...
„ (3) ..	...	...	...
71 ...	70 ...	4 ..	53
72 ..	71 ...	...	...
73 ...	...	...	...
74 ...	55 ...	48, para. 1 ...	36
75 ...	56 ...	...	...
76 ...	57, para. 2 ...	48, para. 2 ...	...
77 ...	59 ...	17 ...	...
78 ...	60 ...	51 ..	37
79 ...	2 ...	2 ..	1

the English Stamp Acts of 1870 *and* 1891 *corresponding Indian Stamp Act, II of* 1899—(*contd.*).

Act XXXVI of 1860.	English Stamp Act, 1870 (33 & 34 Vic. c. 97.).	English Stamp Act, 1891 (54 & 55 Vic. c. 39).
...	19 (3), (4), (5) ...	13 (3), (4), (5)
...	...	...
...	...	...
3,9 ...	54 (1), 102 (3) ...	88 (1), 80 (3)
13, cl. (1) proviso ...	127 ...	107
...	...	...
6,9 ..	24 (2) ...	8 (3)
35,36 ...	10 ...	5
...	...	...
15 ...	123 ...	103
...	118 ...	97, 100
10 ...	...	..
...	...	...
...	...	...
31 ...	..	...
37 ...	...	...
...	...	...
...	...	...
38, 39 ...	...	...
...	...	...
...	21 (1) ...	16
19 ..	...	...
...	...	...
...	...	...
...	...	...
...	...	...
1 ...	...	...

Table showing the Sections of Act II of 1899 corresponding to the Sections of Act I of 1879.

Act I of 1879.	Act II of 1899.	Act I of 1879.	Act II of 1899.
Section.	*Section.*	*Section*	*Section*
1 ..	1	20 ..	20 (1)
2 ...	*See* Act X of 1897, ss. 6, 8, 24.	21 ..	21
		22 ..	22
3 (1) ..	2 (1)	23 ...	23
,, (2) ..	,, (2)	24 ..	24, para. 1
,, (3) ..	,, (4)	25 ..	25
,, (4) ..	,, (5)	26 ...	26, para. 1
,, (5) ..	,, (6)	27 ...	27
,, (6) ..	,, (7)	28 ..	29
,, (7) ...	,, (8)	29 ..	2
,, (8) ..	,, (9)	30 ...	31
,, (9) ..	,, (10)	31 ..	32
,, (10) ..	,, (11)	32 ...	...
,, (11) ..	,, (15)	33 ..	33
,, (12) ..	,, (16)	34 ..	35, para. 1
,, (13) ..	,, (17)	34, proviso (1) ...	,, proviso (a)
,, (14) ..	,, (18)	34, proviso (2) ..	,, proviso (b)
,, (15), para. 1 ..	,, (19) (a)	34, proviso (3) ..	36
,, (15), para 2 ...	,, (19) (b), (c)	35 ..	38
,, (15), paras 3,4	,, (20)	36 ..	39
,, (16) ..	,, (21)	37 (a) ..	40, (1) (a)
,, (17) ..	,, (23)	37 (b) ...	40 (1) (b)
,, (18) ...	...	37, proviso ..	40, proviso
,, (19) ..	,, (24)	37, para 5 ..	40 (2)
,, (20) ...	*See* Act X of 1897, s. 3 (56)	37, para 6 ..	40 (1)
		38 ..	41
,, (21) ..	,, do. s. 3 (58)	39 ...	42
4 ..	,, do. s. 3 (43)	40 ...	43
5 ...	3 (a), (b), (c)	41 ...	44 (1), (2)
6 ..	4 (1), (2)	42 ..	45 (1)
7, para. 1 ...	5	43 .	46
7, para. 2 ...	6	44 ...	47
7 A ...	7	45 ..	56 (2), (3)
7 B ..	8 (1), (2), (3)	46 ..	57
8 (a) ...	9 (a)	47 ...	58
8 (b) ...	*See* Act X of 1897, s. 21	48 ..	59
9 ...	10	49 ...	60
10 ...	11	50 ...	61
11 ...	12 (1), (2)	51 (a) to (d) ..	49
12 ...	13	,, proviso (a) ..	,, proviso.
13 ...	14	,, proviso (b) ..	50
14 ...	15	52 ..	52
15 ...	16	53 ..	53
16 ...	17	54 ...	54
17 ...	18	55 ...	74
18 ...	19	56 ..	75
19 ...	20 (2)	57, para 1 ...	*See* Act X of 1897, ss. 14 and 21.

Table showing the Sections of Act II of 1899 *corresponding to the Sections of Act I of* 1879—*(contd.).*

Act I of 1879.	Act II of 1899.	Act I of 1879.	Act II of 1899.
Section.	*Section.*	*Section*	*Section.*
57 para 2 .	76	65 .	66
58 .	80	66 ..	67
59 .	77	67 ..	68
60 ..	78	68 .	69
61 ..	62 (1)	69 ..	70 (1) (2)
62 ..	63	70 ..	71
63 ..	64	71 ..	72
64 .	65	72 ..	*See* Act X of 1897, s. 26.

Table showing the Sections of Act II of 1899 *corresponding to the Sections of Act XVIII of* 1869.

Act XVIII of 1869.	Act II of 1899.	Act XVIII of 1869	Act II of 1899.
Section.	*Section*	*Section*	*Section.*
1 ...	1	3 (16) ...	*See* Art. 37.
2 ..	79	,, (17) ...	*See* Art. 38.
3 (1) ...	(*See* Art. 4, Sched. I).	,, (18) ...	2 (17)
		,, (19) .	...
,, (2) ...	(*See* Art. 12, Sched. I).	,, (20) ...	*See* Art. 42.
		,, (21) ..	2 (18)
,, (3) ...	2 (2)	,, (22)	2 (15)
,, (4) ...	2 (4)	,, (23) .	2 (9) (a)
,, (5) ..	(5) (a)	,, (24) .	2 (21)
,, (6) ...	(*See* Art. 16, Sched I).	,, (25) ..	2 (22)
		,, (26) ..	..
,, (7) ..	(*See* Art. 20)	,, (27) ..	*See* Art. 50.
		,, (28) ...	*See* Art 51.
,, (8) ..	2 (7)	,, (29) ...	2 (21)
,, (9) ...	2 (9)	,, (30) .	*See* Art. 55.
,, (10) .	(*See* Art. 22, Sched I)	,, (31) ..	*See* Art 56.
		,, (32) .	2 (24)
,, (11)	2 (10)	4	3 (1), (c),
,, (12) .	..	5 (a) .	10, 11 (a), (b), (c)
,, (13) ...	(*See* Art 65, Sched. I).	5 (b) ..	10
		6 .	29
,, (14) ...	2 (13)	7 .	3 (*b*)
,, (15) ...	2 (16)	8 ...	19

Table showing the Sections of Act II of 1899 corresponding to the Sections of Act XVIII of 1869—(contd.).

Act XVIII of 1869.	Act II of 1899.	Act XVIII of 1869.	Act II of 1899.
Section.	*Section*	*Section*	*Section.*
9	23	25 ...	42(1), 42(2),46 (1)
10 ...	20 (2)	26 ..	47
11 ...	26 para. 1	27 (a) ...	30
12 ...	25 (b), (c)	,, (b) ...	65
13 ...	4	28 ...	35, proviso (a), 40 (1), 41.
14 ...	5, 6,	29, 30 ...	62 (1)
15 (1) ..	Art. 58, exemp. (c)	31 ...	19, 68
,, (2) ..	,, ,, (b)	32 ...	67
,, (3) ...	,, ,, (a)	33, para 1 ...	12
,, (4) ..	Art. 62, exemp. (a), (c)	,, para. 2 ...	68
,, (5) ...	Art. 40, exemp. (2)	34 (a) .	27
,, (6) ...	Art 62, exemp. (d)	,, (b) ...	24, para. 1
,, (7) ..	Art. 57. exemp. (e)	,, (c)	64
,, (8) .	Art. 5, exemp. (a)	35 ...	61
,, (9)	Art. 35, exemp. (a)	36 ...	...
,, (10) .	Art. 25, exemp.	37 ...	...
,, (11) ...	Art. 61, exemp.	38 ...	Stamp Rule 22, App. II
,, (12) .	Art 4, exemp. (c)	39 ...	31, 32
,, (13) ...	Art. 24, exemp. (a)	40, para. 1	56 (1)
,, (14) ..	...	40, para. 2 ...	...
,, (15) ...	3, proviso (1)	41 (a), (b) ...	57
,, (16) .	Art. 47, exemp.	,, (c) ...	58
16	9 (a)	,, (d) ...	59
17	77	42 ...	...
18 (a) .	35, para. 1	43 ...	70 (1)
,, (b)	35, proviso (d)	44 ..	71
19 ...	35, proviso (a)	45, para. 1 ..	54
20, paras. 1 to 3 .	,,	,, para. 2 ...	49
,, paras. 4 to 6 .	42 (1), (2)	,, para. 3 ...	50
21 (a) ...	42 (2)	,, para. 4 ...	53
,, (b) ..	38 (1), 42 (2)	46 ..	49
,, (c) ...	38 (1)	47 ..	...
22	33, 38 (2), 43	48, para. 1 ..	74
23 ...	33, 38 (2)	,, para. 2 ...	76
24 (a) .	10 (1) (a), (b), 40 (3), 43	,, para 3 ..	69 (a)
,, (b) ...	41	49 ..	10, Stamp Rule 7.
,, (c) .	18	50 ...	Do.
,, (d) ...	10 (2), 42 (2)	51 ..	78

Table showing the Sections of Act II of 1899 corresponding to the Sections of the English Stamp Act of 1870.

English Stamp Act (1870), 33 & 34 Vic. C. 97.	Act II of 1889.
Section.	*Section.*
1	1
2 (1), (2)	...
2 (3)	Act X of 1897, s. 3 (58).
„ (4)	2 (14)
„ (5), (6)	...
„ (7)	2 (12)
„ (8), (9)	2 (16 A)
„ (10), (11)	Act X of 1897, s. 3 (39).
„ (12)	...
3	3
4	...
5	...
6 (1)	10
6 (2)	Act X of 1897, s. 3 (48).
7 (1)	13
7 (2)	...
8 (1)	5
8 (2)	..
9 (1)	Stamp Rule 17 App. II.
9 (2)	2 (11)
10	27
10 (1), (2)	61 (a), (b)
11	20 (1)
12	21
13	22
14	16
15 (1)	40 (b)
15 (2) (a)	18 (1)
15 (2) (b)	...
16 (1)	35, Proviso (a)
16 (2)	38 (1), 42 (1)
16 (3)	...
17	35
18 (1)	31 (1)
18 (2)	32 (2)
18 (3)	32 (1)
18 (4)	32 (3)
18 (5) (a), (b)	...
18 (5) (c)	32, Proviso
19	...
20	31 (2)

English Stamp Act (1870), 33 & 34 Vic. C. 97.	Act II of 1889.
Section.	*Section.*
21 (1)	73
21 (2)	...
22	...
23	Stamp Rules 5 & 6 App. II
24 (1)	12
24 (2)	63
25 (1), (2)	6
25 (3)	8 (c)
26 (1)	8
26 (2)	70 (2) and Stamp Rule 22.
27	...
28	...
29 to 35	...
36	...
37	...
38	...
39	Art. 9, Sched I
40	..
41 to 44	..
45 to 47	..
47 (1)	2 (2)
48 (2), (3)	2 (a), (b)
49	2 (22)
50	11 (a)
51 (1)	11 (b)
51 (2)	19
51 (3) (a)	19, Proviso (a)
51 (3) (b)	...
51 (4)	19, Proviso (b)
52	...
53 (1)	37, Stamp Rule 18, App. II.
53 (2)	35, Proviso (a) 40 (1)
54 (1)	62 (1) (a)
54 (2), (3)	47
55	..
56	..
57	...
58	...
59	..
60 to 65	...

Table showing the Sections of Act II *of* 1899 *Corresponding to the Sections of the English Stamp Act of* 1870—(*contd.*).

English Stamp Act (1870). 33 & 34 Vic. c. 97.	Act II of 1899.	English Stamp Act (1870). 33 & 34 Vic. c. 97.	Act II of 1889
Section.	*Section.*	*Section.*	*Section*
66 to 68 ..	...	96 (1) .	Art. 35, para. 1
69 (1) ..	11 (a)	96 (2) ...	,, Proviso
69 (2) ..	62 (b)	97 ..	Art. 35
69 (3) ...	...	98 to 100 ..	...
70 ...	2 (10)	101 ..	62 (1) (b)
71 ...	...	102 ...	12 (1), 62 (1) (c)
72 (1), (2), (3) ...	25	103 ...	...
72 (4) ..	..	104 ..	...
73 ..	21, para. 1	105, para 1 ...	2 (17)
74 ...	28	106	
75 ...	...	107 (1) ..	...
76 ...	4 (1)	107 (2) ...	26, para 1
77 ...	...	107 (3) ...	...
78 ..	...	108 ...	..
79 ..	...	109 to 115 ..	..
80 ...	Stamp Rule 17 (c), App. II.	116 ..	11 (d)
		117 ...	2 (19)
81 to 86 ..	...	118 ...	66
87 ...	Art. 28, Sched. I	119 ..	...
88 ...	Art. 65 ,,	120 ..	2 (23)
89 ...	11 (a)	121 ...	11 (a), 12 (1)
90 ..	...	122 ..	35, Proviso (b)
91 (a) (c) .	...	123 ..	65
91 (b), 92 ...	62 (b)	124-6 ..	. ..
93 ..	6, Proviso	127 ..	62 (2)
94 ..	...	128 ...	.
95 ..	...		

Table showing the Sections of Act II of 1899 *corresponding to the Sections of the English Stamp Act of* 1891.

English Stamp Act, 1891, (54 & 55 Vic. c. 39).	Act II of 1899.	English Stamp Act, 1891, (54 & 55 Vic. c. 39).	Act II of 1899.
Section.	*Section.*	*Section.*	*Section.*
1 ...	3, para. 1	32 ..	2 (2)
2 ...	10 (1). Stamp Rules, ch. II	32 (a), (b), ...	2 (3) (a), (b)
		33 .	2 (22)
3 (1) ...	13	34 (1) ...	11 (a), 12 (1)
3 (2) ..	5	34 (2) .	11 (b)
4 .	5	35 ...	19
5 ...	27	36 ...	S. 8, Act xxxvi of 1860 and S. 10, Act x of 1862.
5 (a) ..	64 (a)		
5 (b) .	64 (b)		
6 (1) (a) ..	20 (1)	37 ...	37
6 (1) (b) ...	21	38 (1) ..	62 (1) (a)
6 (2) ..	22	38 (2) .	47
7 ...	...	39 ..	...
8 (1), 8 (2) ...	12	40 (1) ...	...
8 (3) ...	64	40 (2) ..	62 (1) (b)
9 ..	...	41 ..	...
10 (1) ...	11	42 ...	...
10 (2) ..	...	43 to 48 ...	...
11 ...	16	49 (1 ...	Art. 20
12 (1), (2), (6c)	31	49 (2) .	...
12 (3), (4), (5), (6b)	32	50 ...	..
		51 ..	...
13 ...	..	52 (1) ..	43
14 (1) ...	33 (1), 35, proviso (a).	52 (2) ..	...
		52 (3), (4) ...	12 (1)
14 (2), 14 (3) ...	38 (1), 42 (1)	53 (1), (3), (4)	...
14 (4) ..	35 para. 1, proviso (d)	53 (2) ...	62 (1) (b)
		54 ...	2 (10)
15 (1) ...	40 (1) (b)	55 ...	Art 23
15 (2) (a), (b) ...	18, 41	56 (1), (2), (3).	25
15 (2) (c), (d) ...	...	57 ...	24
15 (3) (a) ...	18 (1)	58 (1), (2), (1) to (6)	28
15 (3) (b) ...	45 (1)		
15 (4) ...	...	58 (3) ..	6, para 1
16 ...	73	59 ...	...
17 ...	...	60 ...	...
18 ...	...	61 (1) ...	...
19 ...	...	61 (2) ...	6, para, 2
20, 21 ...	...	62 ...	...
22 ...	...	63 ...	...
23 ...	28	64 ...	...
24 ..	...	65 to 68 ...	...
25 ...	Art. 9	69 ..	12 (1), Art. 28
26 ..	...	70, 71 .	...
27, 28 ...	...	72 ...	...
29, 30, 31 ...	...	73 ...	...

Table showing the Sections of Act II of 1899 corresponding to the Sections of the English Stamp Act of 1891—(contd.)

English Stamp Act, 1891, (54 & 55 Vic. c. 39)	Act II of 1899.	English Stamp Act, 1891, (54 & 55 Vic. c. 39).	Act II of 1899.
Section.	*Section.*	*Section.*	*Section.*
74 ..	...	97 (2), (3) ..	...
75 to 78 ...	.	98, 99 ...	.
79 ..	12 (1) 62 (1) (b)	100 ..	66
80 (1), (2) ..	52	101 (1) ..	2 (23)
80 (3) .	62 (1) (c)	101 (2) ..	12 (1)
81 ..	...	102 ...	32, proviso (b)
92 to 95 .	...	103 ...	65
86 (1) .	2 (17)	104 to 106 .	...
86 (2) ..	Art. 6	107 .	62 (2)
87 .	...	108 to 110 .	...
88 (1), (2) ..	96	111 (1) ..	Art. 65
88 (3) ..	...	111 (2) .	12 (1)
89 ..	...	111 (3) ...	62 (1) (b)
90 ...	...	112 to 120 ...	..
91 ..	2 (19)	121 ..	48
92 ..	2 (20)	122 (1), cl. 4, 5. ...	2 (11), (18)
93, 94 ..	7	,, cl. 6 ..	2 (12)
95 ..	...	123 ...	70
96 ..	..	124 .	1
97 (1) ...	66, 68 (c)	125 ...	

Table showing the exemptions to the articles of Schedule I of Act II of 1899 corresponding to the articles of Schedule II of Act I of 1879.

Act I of 1879, Schedule II, Article.	Act II of 1899, Schedule I. Article to which the exemption is made.	Act I of 1879 Schedule II, Article	Act II of 1899, Schedule I, Article to which the exemption is made.
1 ...	4	12 (a) ..	40, 57
2 (a), (d), (f) ...	5	12 (b) ...	57
2 (c) ..	App. I, Art. 19	12 (c) ...	9
3 ...	8	13 (a), (b) ..	35
4 ..	6	13 (c) ..	25
5 ...	23	14 (a) ..	17
6 ..	12	14 (b) .	40
7 .	11	15 .	53
8 (a) .	App. I, Art. 18	16 ..	61
8 (b), (c) ...	15, 57	17	...
9	24	18 ...	S. 3. Proviso (1)
11 (a) ...	30		

Table showing the articles of Schedule I of Act II of 1899 *corresponding to the articles of Schedule I of Act I of* 1879.

Act I of 1879, Schedule I, Article.	Act II of 1899, Schedule I, Article.	Act I of 1879, Schedule I, Article.	Act II of 1899 Schedule I, Article.
1 ...	1	26 ...	33
2 .	2	27 ...	45
3 .	4	28 ...	3
4 ..	35	29 (*a*) ..	35 (*a*) (i), (ii), (iii)
5 (*a*) .	5 (*a*)		
5 (*b*) ..	App I, Art. 7	29 (*b*) .	35 (*a*) (iv)
5 (*c*) ..	5 (*b*)	29 (*c*)	35 (*b*)
6 .	7	29 (*d*) ..	35 (*c*)
7 .	8	,, proviso ...	,, Proviso
8 ...	10	40 .	26
9 ...	11	41 ..	37
10 .	12	42 ..	38
11 ...	13	43 ...	39
12	14	44 (*a*) ..	40 (*a*)
13	15	44 (*b*) .	40 (*b*)
14 ...	57	45 ...	42
15 ..	16	46 ...	43
16 ...	18 (*b*)	47	44
17	19	48 .	...
18 ..	20	49 (*a*), (*b*), (*c*), (*d*)	47 (A), (B), (D), (E)
19	21		
20	22	50 (*a*), (*b*), (*c*), (*d*), (*e*)	48 (*a*), (*c*), (*d*), (*e*), (*g*)
21 ..	23		
22 ...	24	50, 3rd heading	50
23 ...	25	50, 4th heading	51
24 ...	26	51 ...	52
25 ...	64 A	52 ..	53
26 ...	28	53 ...	54
27 ...	30	54 ...	55
28 ..	34	55 ...	56
29 ...	6	56 ...	61 B
30 ..	32	57 ..	58 A
31 ...	9	58 ...	60
32 .	46 A	59 ...	61
33 ...	46 B	60 (*a*), (*b*), (*c*), (*d*)	62 (*a*), (*c*), (*d*), (*e*)
34 ..	29	60 A ...	63
35 ...	31	61 ..	65

Table showing the articles of Schedule I of Act II of 1899 *corresponding to the articles of Schedules I and II of Act XVIII of* 1869.

Act XVIII of 1869, Schedule I, Article.	Act II of 1899, Schedule I, Article.	Act XVIII of 1869, Schedule II, Article.	Act II of 1899, Schedule I, Article.
1	13 (b)	1	13 (a), 21, 49
2	19	2	27
3	47	3	5 (a)
4	62 (a)	4	19
5	15	5	1
6	16	6	60
7	56	7	53
8	96	8	52
9	21	9	14
10	40 (b)	10	65
11	32 (b)	11	5 (b)
12	57	12	44
13	62 (c)	13	48 (a)
14	58 A	14	4
15	23	15	
16	40 (a)	16	25, S. 16
17	32 (a)	17	16 B
18	31, 45	18, 19	18 (c)
19 (a), (b), (c)	35 (a) (i), (ii), (iii)	20	40
		21	6
19 (c)	35 (a), (iv)	22	30
19 (d)	35 (b)	23	42
19 (e)	35 (c)	24	50
20	61	25	51
21	8	26	46 A
22	12	27	54
23	24	28	22
		29	38
		30	55
		31	3
		32	48 (g)
		33	10
		34	39
		35	7
		36	64
		37	33
		38	31
		39	45
		40	
		41	11

Table showing the articles of the Schedules of the old Stamp Acts corresponding to the articles of Schedule I of Act II of 1899.

Act II of 1899, Schedule I, Article.	Act I of 1879, Schedule I, Article.	Act XVIII of 1869. Schedule I, Article.	Act XVIII of 1869. Schedule II, Article	Act X of 1862, Schedule A, Article.	Act XXXVI of 1860, Schedule A, Article.
1	1		5	..	
2	2				
3	38		31		
4	3		14	8	2
5 (a)	5 (a)		3	5	
5 (b)	5 (c)		11	1,paras.1,4,6,	1, 18, 28
6	29		21	7, 13, 46, 47	1, 36, 41
7	6		35	..	
8	7	21			
9	31				
10	8		33		
11	9		41		
12	10	22			
13 (a)	11 (a)		1		4
13 (b)	11 (b)	1		10	1
13 (c)	11 (c)				5
14	12		9	11	6
15	13	5		12,15 to 17,19	8, 10 to 12
16	15	6		14	9
17					
18 (a), (b),					
18 (c)	16				
19	17		4	20	
20	18		22	21	16
21	19		1	10	4
22	20		28	22	17
23	21	15		23 to 25	7, 19
24	22	23		28 to 32	21 to 24
25	23			33, 37	33
26	24	8			
27					
28	26				
29	34				
30	27				
31	35	18	38	38	27
32 (a)	30 (a)	17			
32 (b)	30 (b)	11			
33	36		37	37	25
34	28	9			
35	4, 39	19, s. 3 (15)		3	18
35 (a) (i), (ii), (iii)	39 (a)	19 (a), (b), (c)		40	30
35 (a) (iv)	39 (b)	19 (c)		41	31
35 (a) (v)					
35 (b)	39 (c)	19 (d)		39	20

Table showing the articles of the Schedules of the old Stamp Acts corresponding to the articles of Schedule I of Act II of 1899—(contd.).

Act II of 1899, Schedule I, Article.	Act I of 1879, Schedule I, Article.	Act XVIII of 1869. Schedule I, Article.	Act XVIII of 1869. Schedule II, Article.	Act X of 1862, Schedule A, Article.	Act XXXVI of 1860, Schedule A, Article.
35 ...	4,39 ...	...	...	...	...
35 (c) ...	39 (d) ...	19 (e) ...	...	42 ...	32
,, proviso	,, proviso.	...	...	3, proviso...	
36 ...	40 ..	...	...	...	
37 ...	41 ..	...	2 ..	10 ...	4
38 ...	42 ...	...	29 ..	45 ...	35
39 ...	43 ...	..	34 ...	...	
40 (a) ...	44 (a) ...	16 ..	20 ...	46 to 49 .	37,36,39to 41
40 (b) ...	44 (b) ..	10 ..			
40 (c) ...	... ...	...	...	50 ...	
41 ...	... ...	..	...	...	
42 ...	45 .	...	23, s. 2 ..	53 ...	
43 ...	46 .	...	...	...	
44 ...	47 .	...	12 .	60 ...	
45, part. 1.	37 ..	18 ...	39 ...	51 ...	42
45, provisos (a),(b),(c).	...	...	..	..	...
46 A ...	32 ...	..	26 .	27 ...	20
46 B ...	33 ...	...	...	...	...
47 A ...	49 (a) }				
,, B ..	,, (b) } ...	3 ...	...	56 ...	44
,, C ...	...	..	.	55 ...	...
,, D ...	,, (c) ...	...	..	...	...
,, E ...	,, (d) ...	..	...	55 ...	43
48 (a) ...	50 (a) ...	...	18 ...	...	...
,, (b) ...	..	...	..	...	...
,, (c) ...	50 (b) ...	...	18. 19 ...	13 ...	34
,, (d) to (g)	,, (c) to (e)	...	32 ...	...	...
49 ...	11 ...	2 ...	1 ...	10, 57 ...	4, 45
50 ...	50 (heading 3).	...	24 ...	58 ...	46
51 ...	,, (heading 1).	...	25,s. 3 (28),	59 ...	46
52 ...	51 ...	...	8 ..	s. 5, Act 26 of '67 ...	...
53 ...	52 .	..	7 ...	61 ...	47
54 ...	53 ..	...	27 ...	51 ...	37
55 ...	54 ...	.	30 ...	52 } 62 } ...	38
56 ...	55 ...	7 .	..	14 ...	9
57 ...	11 ...	12 ..	..	18 ...	13
58 A ..	57 ...	14 ..	...	35, 64 ..	25, 49
,, B. ...	.	..	...	...	...
59 ...	..	.	...	...	...
60 ...	58 ...	...	6 ...	65 ...	...
61 ...	59 ...	20 ..	...	...	...

Table showing the articles of the Schedule of the old Stamp Acts corresponding to the articles of Schedule I of Act II of 1899—(contd.).

Act II of 1899, Schedule I, Article.	Act I of 1879, Schedule I, Article.	Act XVIII of 1869. Schedule I, Article.	Act XVIII of 1869. Schedule II, Article.	Act X of 1862, Schedule A, Article.	Act XXXVI of 1860, Schedule A, Article.
62 (a) ...	60 (a) .	4 ...	--	26 ...	19
„ (b) ...	...	...	...	...	...
„ (c) ...	„ (b) ...	13 ...	...	9 ...	3
„ (d), (e).	„ (c), (d).	...	..	62 ...	...
63 ..	60 A. ...	...	...	...	...
64 A ..	25 ...	...	36 ..	9 ..	3
„ B ...	56 ...	...	...	...	...
65 ...	61 ...	...	10 ...	66 ...	...

Table showing the exemptions under the old Acts corresponding to the exemptions to the articles of Schedule I of Act II of 1899.

Act II of 1899, Schedule I.	Act I of 1879, Schedule II.	Act XVIII of 1869.	Act X of 1862.	Act XXXVI of 1860.
Exemp. (a) to Art. 4	Art. 1 (a) ..	...	...	...
„ (b) „ „	„ 1 (b) ...	*See* Art. 14, Sched. II	...	...
„ (c) „ „	„ 1 (c) ...	s. 15 (2) ..	..	...
„ (a) „ 5	„ 2 (a) ...	„ 15 (8) ...	Exemp. to Art. 4.	Exemp. (cl. 2), to Art. 1.
„ (b) „ „	„ 2 (d) ..	...	..	...
„ (c) „ „	„ 2 (f) ..	...	...	..
„ (a) „ 8	„ 3 ...	...	...	...
„ (a) „ „	„ 4 ..	...	...	...
„ „ 9	„ 12 (c) ...	...	...	...
„ „ 10	*See* Art. 11 Sched. II, Pt. II Apd. (D)	...	...	...
„ „ 12	Art. 6 ...	...	..	...
„ (a) „ 14	„ 7 ...	...	...	...
„ (b) „ „	*See* Art. 8, Sched. II Pt. II App. D	...	...	...
„ (a) „ 15	Art. 8 (b) ...	...	...	...
„ (b) „ 15	„ 8 (c) ...	...	...	...
„ „ 23	„ 5 ...	...	...	...
„ (a) „ 24	„ 9	s. 15 (13) ...	Exemp. to Art. 32.	Exemp. to Art. 24.

Table showing the exemptions under the old Acts corresponding to the exemptions to articles of Schedule I of Act II of 1899—(contd.).

Act II of 1899, Schedule I.	Act I of 1879, Schedule II	Act XVIII of 1869.	Act X of 1862.	Act XXXVI of 1860.
Exemp. (b), (c), Art. 24	*See* Art. 9 (b), (c), Sch. II, Pt. II, App. D.	...	...	...
,, ,, 25	Art. 13 (c) ...	s. 15 (10) ...	Exemp. to Art. 33	Exemp. to Art. 33
,, ,, 30	,, 11 (a) ...	...	...	...
,, (a) ,, 35	,, 13 (b) ...	s. 15 (9) ...	Exemp. to Art. 42	Exemp. to Art. 33
,, (b) ,, ,,	,, 13 (a) ...	...	...	...
,, ,, 39	*See* Art. 11, Sch. II, Pt. II, App. D.	...	...	...
,, (1) ,, 40	Art. 12 (a) ...	...	...	...
,, (2) ,, ,,	,, 14 (b) ...	s. 15 (5) ...	Exemp. to Art. 50	...
,, (3) ,, ,,	*See* App. D, Pt. II, Sch. II, Art. 8 (1) ...	.	...	...
,, 47 C (a) ...	*See* App. D, Pt. II, Sch. II, 12 (*b*).	...	...	...
,, 47	Art. 14 (a) ,,	s. 15 (6) ...	Note to Art. 56	...
,, (a) to Art. 58	,, 15 (a) ...	s. 15 (3) ...	Exemp. (cl. 3) & 4 to Art. 61	Exemp. cl. 3.5 to Art 47
,, (b) ,, ,,	,, ,, (b) ...	...	...	...
,, (c) ,, ,,	,, ,, (c) ...	s. 15 (1) ...	Exemp. (cl. 2) to Art 61	Exemp. cl. 1,2 to Art 47
,, (d) ,, ,,	,, ,, (d) ...	,,	...	...
,, (e) ,, ,,	,, ,, (e) ..	...	...	...
,, (f) ,, ,,	,, ,, (f) ..	...	...	...
,, (g) ,, ,,	,, ,, (g) ..	..	...	..
,, (h) ,, ,,	,, ,, (h) ...	s. 15 (2) ..	Exemp. (cl. 5) to Art 61	Exemp. cl. 6 to Art. 47
,, (a), (b) ,, 57	,, 8 (b), (c) .	...	...	...
,, (c) ,, ,,	...	...	...	...
,, (d) ,, ,,	, 12 (a) ...	...	...	...
,, (e) ,, ,,	,, 12 (b) ...	s. 15 (7) ...	...	...
,, (a) ,, 58	*See* App. D, Pt. II, Sch. II, Art. 8 (k).	...	...	...
,, (b) ,, ,,	...	...	...	...
,, ,, 61	Art 16 ...	s. 15 (11) ..	..	
,, (a) ,, 62	Art. 17 (a) .	s. 15 (4) .	Exemp. to Art. 9	Exemp. to Art 3
,, (b) ,, ,,	,, 17 (b), (f) ...	..	...	...
,, (c) ,, ,,	,, 17 (c) ..	s. 15 (4) ...	Exemp. to Art. 9	Exemp. to Art 3
,, (d) ,, ,,	,, 17 (e) ...	s. 15 (6) ...	,, 25	I9
,, ,, 63	...	...	...	...

INTRODUCTION.

The Stamp Law is briefly considered here under the following heads:—(1) The origin, nature and object of the Stamp Law; (2) The Stamp Law of India as contained in the Regulations and Acts; and (3) General principles bearing upon the incidence of taxation.

Origin of Stamp Law.—Stamp duties appear to have been invented by the Dutch in 1624. They were first imposed in England in 1694 by 5 & 6 Will. and Mary, c 21, as a temporary means of raising funds for carrying on war with France. The next statute appears to be 1 Anne, St. 2, c. 22 (1702). Stamp duties now depend in England upon a very large number of statutes, the important statutes being 55 Geo III, c. 184, (1815), 13 & 14 Vic., c. 97 (1850), 33 & 34 Vic., c. 97 (1870), and the present Act, 54 & 55 Vic., c. 39 (1891).

Stamp duties appear to have been first imposed in Bengal by Regulation VI of 1797, in Madras by Regulation VIII of 1801, and in Bombay by Regulation XIV of 1815, with the view of adding to the public resources without burthening individuals Various Regulations were passed from time to time in the three Presidencies having force only in those Presidencies till 1860, when the Stamp Act, XXXVI of 1860, repealed all the Regulations and was extended to the whole of British India Stamp duties in India depend upon these Regulation, and the Stamp Acts passed by the Governor-General in Council the principal Acts being XXXVI of 1860, X of 1862, XVIII of 1869, I of 1879 and the present Act, II of 1899. The Stamp Law of British India, as contained in these Acts, is in most respects modelled upon the English Stamp Law.

Nature and object of Stamp Law.—All laws are classified by Bentham into Substantive Law and Adjective Law. Substantive Law is that by which rights, duties and liabilities are defined. Adjective Law is that which consists of rules by

which the Courts proceed to bring before them the parties, their witnesses, their documents and other materials for adjudication—to ascertain the facts by questioning the persons and inspecting the things—to record their judgments, and, if necessary, to enforce them. The Indian Penal Code and the Indian Contract Act, for instance, come under Substantive Law. The Codes of Civil and Criminal Procedure and the Law of Evidence are branches of Adjective Law. The Stamp Law is mainly Adjective Law. The rules relating to the mode and the time of stamping instruments, the levying and the refund of penalty are Adjective Law, while the rules defining stamp offences are Substantive Law.

The purpose and object of the Stamp Law is to raise revenue by means of money to be paid by the public for stamps issued by Government under the authority of an enactment and to protect the stamp revenue by providing a penalty for every infraction of its provisions. It also helps in the detection of the forgery of ancient documents from the presence or absence of the distinguishing marks impressed on stamps issued under the Regulations and Acts. In the Introduction to his "Law of Evidence," Field observes that a reference to the stamp at the time of execution is one of the means of testing the genuineness of a written instrument and gives the following instance in which this test was applied:—With regard to a conveyance which purported to have been executed in 1855, the stamp paper on which it was engrossed was examined and found to bear the Royal Arms of England with V. R. and a crown above. But this paper was not manufactured till 1859, when Her Majesty assumed the Government of India, and the paper which was previously in use bore only the Arms of the East India Company with the

I.

letters E. C. Thus the conveyance was discovered to be a forgery (*a*).

(*a*) Field's Law of Evidence, 65. Stamp paper manufactured in England and bearing in water-mark the device of the Arms of the East India Company was introduced by Bengal Regulation XVI of 1824; *see* below, p lxxxiv-v

Descriptions of Stamps.—Fees payable under certain legislative enactments or under the executive orders of Government are collected in cash, or levied in the following cases in the shape of stamps. (1) Duties are levied by stamps on the record of certain private transactions under the Stamp Law* (2) Stamps are also required by law to be used for the purpose of levying the fees under the Court Fees Act, *i.e.*, fees to be paid by persons having business in courts of justice and in Government offices. The expression "General Stamps" was applied to stamps issued under the General Stamp Act of 1869. The stamps used for fees under the Court Fees Act of 1870 bear the inscription "Court Fees." The title 'General Stamp Act' of the Act of 1869 was changed into the "Indian Stamp Act" when the General Stamp Act of 1869 was repealed by Act I of 1879. Since then the expression "Judicial Stamps" has been applied to the stamps under the Court Fees Act, and "Non-judicial stamps" to the stamps under the Stamp Act, though the expression "General Stamps" is still used for stamps under the Stamp Act in the departmental returns (3) Besides the two descriptions of stamps above mentioned there is another description of stamped papers known as "copy stamps' which are impressed sheets of the value of two annas each with the words, "for copies only," engraved or over-printed on them. (4) Stamps are also employed (*a*) to indicate the payment of value for services to be performed by the Postal and Telegraph Departments, and (*b*) to realise the fees payable for the issue of licenses under the Arms and Forest Acts.

Kind of stamps.—Stamps used under the Stamp Act are either impressed or adhesive; impressed stamps include (*a*) labels affixed and impressed by the proper officer referred to in Stamp Rule 9 (see Appendix II), and (*b*) stamps embossed or engraved on stamped paper [S.2 (13)]. Stamp Rules (printed as Appendix II to the Act) provide for the description of stamp to be used in the case of each kind of instrument, and section 11 lays down the cases in which adhesive stamps may be used. Sections 12 and 63 contain special provisions as to the cancellation of adhesive

* Adhesive stamps denoting the duty of one anna are used for both postage and revenue; *see* the next para., below.

stamps and penalties to safeguard cancellation and prevent fraudulent practice. In England the penny postage stamp is allowed to be used to denote the stamp duty of one penny. Though in their Resolution, No. 3481, dated 30th August 1882, the Government of India similarly proposed to permit the use of either a single one anna postage stamp or two half-anna postage stamps to denote the one anna stamp duty, this Resolution does not appear to have been carried out till 1905 when by Notification, No 5300-Exc., dated 21st September 1905, it was provided that the adhesive stamp or stamps to be used to denote the duty of one anna shall bear the words "One anna" or "Half-anna" as the case may be, and that such stamp or stamps may be inscribed either 'for postage or revenue' or 'for both postage and revenue.' This notification has now been embodied as Rule 16 of the Stamp Rules of the Governor-General in Council; see Appendix II, below. In accordance with the above Notification and the Rule postage stamps of the value of one anna, either one anna stamp or two half-anna stamps, have been used in the place of the old adhesive revenue stamp of one anna.

REGULATIONS.

BENGAL PRESIDENCY.

(1) *Regulation VI of* 1797.—Stamp duties on instruments appear to have been first imposed in Bengal by this Regulation. It came into force on the 10th April 1797 in the provinces of Bengal, Behar, Orissa* and Benares The object of this Regulation was; (1) to abolish the tax imposed by Bengal Regulation XXIII of 1793 for raising an annual fund for defraying the expenses of the police establishments entertained under Bengal Regulation XXII of 1793; (2) to establish new fees on the institution and trial of suits in lieu of those prescribed by Regulation XXXVIII of 1795, with a view to discourage the preferring of litigious complaints and the filing of superfluous exhibits

* This Orissa was the Orissa of the Grant by Shah Alam of the 17th August 1765 and corresponded to what is now the district of Midnapur and should not be confounded with the modern Orissa which was not acquired until 1803; (Ilbert p. 89). Benares was ceded in 1775.

and the summoning of unnecessary witnesses in the trial of suits ; and (3) to levy stamp duties on certain law and other papers and documents, with a view to provide for the deficiency occasioned in the public revenues by the abolition of the police tax, as well as to add eventually to the public resources. The law relating to non-judicial stamps and that relating to Court fees were not kept separate either in the Regulations of the three Presidencies or in the Acts of the Government of India until 1867.

The provisions of this Regulation relating to stamps are chiefly laid down in four sections. By section 21 all written obligations except bills of exchange for a sum exceeding Rs. 50 were made chargeable with the *ad valorem* duty of 4 annas, 8 annas, or 1 rupee as the case might be ; and the stamp paper for these instruments bore the inscription "obligation" in three languages. By section 16 all other instruments excepting deeds relating to marriage settlements, and copies of all deeds and instruments were to be written on stamp sheet or sheets of certain sizes and descriptions of the value of one sicca rupee, eight, four or two annas, as the case might be, for every sheet expended in preparing the deeds and copies ; and the papers for these instruments bore the inscription "Law papers" in the vernacular languages. By section 25 sunnads granted to authorised Vakils and Cauzies were required to be written on stamped paper of a certain size and description of the value of twenty-five rupees.

All stamp papers to be furnished by the Superintendent of Stamps to officers were to be counterstamped at the Treasury prior to their issue by the Superintendent, and the counterstamp was to bear the word "Treasury." All documents were admissible in evidence on payment of duty and penalty.

(2) *Regulation VII of* 1800.—The next Bengal Regulation was Regulation VII of 1800. It came into force on the 1st October 1800 in Bengal, Behar, Orissa and Benares. The changes introduced by this Regulation were :—The *ad valorem* duties in the case of all written obligations were raised ; and the stamp papers for these instruments bore the inscription "money paper, etc." Acknowledgments for the receipt of money were charged with the same duty as that prescribed for obligations.

In the case of all other instruments the duty was doubled. Instruments to which Government was one of the contracting parties were exempted from duty. All unstamped documents could be stamped after execution by the Collector on payment of penalty, and documents were not admissible without the prescribed stamp.

(3) *Regulations XIII of* 1806 *and VIII of* 1807.—The next Regulation was Regulation XIII of 1806. It was intended to provide against the offence of forging stamps or stamp paper and was passed on the 10th July 1806, and by section 10 it was enacted that it should take effect after the expiration of one year from that date. It was to be in force throughout the provinces * subject to the immediate government of the *Presidency of Fort William.* Before this Regulation came into operation on the 10th July 1807, Regulation VIII of 1807 was passed on the 16th April 1807, which repealed the provisions of the former Regulation, XIII of 1806, relating to the authentication of the stamp paper by the Superintendent of Stamps, or his Assistants, and to the admissibility of documents in evidence and enacted new provisions in lieu thereof.

The later Regulation was enacted on account of the delay and inconvenience experienced in the issue of stamp paper from the operation of the rule contained in Section 2 of Regulation XIII of 1806, and of the impracticability of furnishing the several Collectors with a sufficient supply of stamp paper authenticated by the Superintendent of Stamps, or his Assistants, within the 10th July 1807. It was to be in force as soon as it was promulgated in the whole of the provinces immediately subject to the Government of the Presidency of Fort William.

Section 9 of Regulation XIII of 1806 required all stamp papers sold by the Collector or other authorised officer to be authenticated by the endorsement thereon of the written signature of the person selling them, the word 'sold' and the date of authentication. In lieu of sections X and XI of Regulation XIII

* These included not only the provinces of Bengal, Behar, Orissa and Benares, but also the large territories known as the North-Western Provinces which were acquired between 1801 and 1803.

of 1806, section 4 of Regulation VIII of 1807 enacted the following provision:—"The whole of the stamp papers already issued by the Superintendent of Stamps (whether it shall have been authenticated with the signature of himself or of his assistants or otherwise) shall be liable to be sold and used, with the exception of such quantity as the Superintendent, with the sanction of the Board of Revenue, may direct to be returned to the Presidency for the purpose of being authenticated in the manner prescribed in section 2 of the above mentioned Regulation. But whenever the Collector shall have been furnished with an adequate supply of stamp paper so authenticated, the Superintendent shall report the same through the Board of Revenue to Government. On the receipt of such report the Governor-General in Council will cause a proclamation to be issued in the several zillahs, notifying that any deed, instrument . . . . required by the Regulation to be written on stamp paper . . . . which may be signed or executed after the date of the said proclamation shall not be considered to be executed in the manner prescribed by the Regulation unless it be written on stamp paper bearing the signature of the Superintendent of Stamps or his Assistant, and the Courts are required to conform to the tenor of such proclamation."

There was no alteration made by the last two Regulations in the rates of duty previously in force.

(4) *Regulation VII of* 1809.—This Regulation came into force on the 1st January 1810 throughout the Presidency of Fort William. There was no alteration in the rates of duties except that sannuds to Vakils and Cauzies did not require to be written on stamp paper. The provisions of the two previous Regulations, XIII of 1806 and VIII of 1807, requiring all stamp papers to be endorsed with the written official signature of the Superintendent of Stamps, or other authorised officer under him, were rescinded by section 2. Stamps for all instruments were to bear one inscription, *viz.*, "Law, *et cetera*, paper."

Regulation XII of 1810 modified the provision of section 2 of Regulation VII of 1809 and enacted that all stamped papers which were in store and were authenticated according to the rules in force previous to Regulation VII of 1809 could

be admitted in evidence as if they had not received such authentication.

(5) *Regulation XII of* 1812.—This Regulation came into force on the 1st November 1812 and extended only to Bengal, Behar, Orissa and Benares. The only alteration made by this Regulation was that unstamped documents were not allowed to be rectified after the expiration of sixty days from the date of execution.

(6) *Regulation XVI of* 1813.—This Regulation came into force on the 13th November 1813 and enacted with retrospective effect that no instrument should be considered invalid by reason of the stamp not being authenticated in the manner provided by Regulation XIII of 1806.

(7) *Regulation I of* 1814.—This Regulation came into force on the 1st May 1814 and extended throughout the Presidency of Fort William. The important changes made by this Regulation were:—(1) Stamped paper, etc., required to be counterstamped at the Treasury. (2) The rule requiring the Superintendent of Stamps to authenticate stamped paper or other material, which was repealed by Regulation VII of 1809 was revived (3) One set of stamps was used for all purposes required by this Regulation. (4) *Ad valorem* duty was for the first time prescribed in the cases of sale, gift, mortgage, etc. (5) The *ad valorem* duty in the case of written obligations and receipts was increased.

Engagements between the Government and private individuals were allowed to be received in evidence by Regulation X of 1814, although written upon unstamped paper.

(8) *Regulation XXVI of* 1814.—This came into force on the 1st February 1815 The only alterations made in this Regulation were that copies of documents were charged as originals and certain instruments which were not for a specific sum were charged with a fixed duty of one rupee.

(9) *Regulation XVI of* 1824.—This came into force on the 30th December 1824. Numerous alterations were made in this Regulation. The rates of duties were altered and increased. This Regulation appears to have been modelled on the English

Statute, 55 Geo. III, c. 184. Stamp papers specially manufactured in England and bearing in water mark the device of the East India Company's Arms were introduced. These papers, as well as the stamped papers then in use and of value not exceeding four annas, did not require to be authenticated by the Superintendent of Stamps, but other papers did so require Unstamped documents could be rectified at any time on payment of penalty No objection could be taken on the ground of improper denomination of the stamp. Stamps did not require to be stamped at the office of the Superintendent and were to be stamped at places fixed by the Governor-General in Council.

(10) *Regulation XII of* 1826 —The operation of this enactment was confined to the Presidency town of Calcutta The provisions of the Schedule of Stamp duties annexed to this enactment were practically the same as those in Regulation XVI of 1824 which was in force in the provinces.

(11) *Regulation X of* 1829 —This was the last Stamp Regulation enacted for Bengal. It was a consolidating enactment and came into force on the 16th June 1829. No objection to the validity of a document could be taken on the ground of overvaluation or on the ground that the stamp intended for use in Calcutta was used for the mofussil. The descriptions of stamp paper requiring to be authenticated by an Assistant to the Superintendent of Stamps were to be determined by the Governor-General in Council. Instruments not duly stamped could not be rectified by the Collector after three months, but the Board of Revenue could direct them to be stamped after that period This Regulation was amended by Bengal Act XIX of 1858 and Bengal Act XLI of 1858. It was repealed by Act XXXVI of 1860.

(12) *Bengal Act XIX of* 1858.—This Act provided against the unlawful use of stamp papers that were plundered during the mutiny and for the authentication of stamp papers issued from the Stamp Office in Calcutta after 6th January 1858

(13) *Bengal Act XLI of* 1858 —This Act related to the execution of a document on more than one sheet of stamped paper.

MADRAS PRESIDENCY.

Regulation VIII of 1808.—Stamp duties in the *Provinces* subject to the Presidency of Fort St. George appear to have been first imposed by this Regulation, which came into force in 1809. It appears to have been framed on the lines of the Bengal Regulations VII of 1800 and XIII of 1806, for its provisions are almost identical with those of the latter two Regulations. The object of this Regulation was :—(1) to establish stamp duties on certain legal instruments, with the view of adding eventually to the public resources, without burdening the individuals; and (2) to adopt rules for the purpose of more effectually securing the public revenue derived from stamp duties and preventing the fabrication and use of forged stamp paper. All original obligations for the payment of money were charged with *ad valorem* duties. Acknowledgments for the receipt of money were charged as obligations for the payment of money. Transfers of property were charged according o the number of sheets expended in engrossing the deeds, and not on the value of the subject-matter. Deeds to which Government was one of the contracting parties were exempt. The Superintendent of Stamps as well as Collectors were required to authenticate the deeds. Documents were admissible on payment of penalty.

Regulation II of 1813.—The next enactment was Regulation II of 1813. This provided for the use of stamped cadjans in common with stamped papers, and did not interfere with the previous Regulation except in one respect mentioned below. The rules end restrictions regarding the use of stamped papers laid down by the previous Regulation were generally applied to stamped cadjans. One stamp denoting the value and denomination of each cadjan was to be affixed at the left extremity of its face and another stamp bearing the word 'Treasury' at the right extremity of its reverse. Stamped cadjans were to bear the inscription "stamped cadjan" in the vernacular languages. Previous to issue they required to be signed by a Native Registrar and not by the Superintendent of Stamps. In the case of stamp papers also, the Superintendent was not required to authenticate, but only Collectors and their Assistants were

required to do so. This was the only provision in this Regulation rescinding any provision in the previous Regulation.

Regulation XIII of 1816.—This Regulation appears to have been framed on the lines of Bengal Regulations I of 1814 and XXVI of 1814, its provisions being almost identical with those of the two latter Regulations. *Ad valorem* duty was prescribed in the case of all instruments. Under this Regulation all documents not duly stamped could not be admitted in evidence on payment of penalty.

Regulation II of 1825.—This was the last Madras Regulation on stamp. It provided for the admission of documents in evidence on payment of penalty. Instruments for sums of money not exceeding Rs. 64 and wills were exempt from duty.

Town of Madras.—The above Madras Regulations were made applicable only to the *provinces* subject to the Presidency of Fort St. George and did not apply to the town of Madras (*a*). It does not appear that any Regulation like the Bengal Regulation XII of 1826 for the town of Calcutta was introduced in the town of Madras. The practice of using stamped cadjans in the Mofussil under Regulations II of 1813 and XIII of 1816 seems to have been adopted in the town of Madras and several documents executed in the town of Madras on stamped cadjans are even now met with.

BOMBAY PRESIDENCY.

Regulation XIV of 1815.—Stamp duties appear to have been first imposed in the Bombay Presidency by this Regulation, which came into force on 1st March 1816. It was framed on the lines of the Bengal Regulations I of 1814 and XXVI of 1814, and its provisions are almost identical with those of the latter. The object of the Regulation will be seen from its preamble, which is in these terms—"Whereas considerable delays and inconveniences have been experienced by the different Courts of Judicature in collecting and bringing into account the prescribed fees on the institution of suits and on exhibits and

(*a*) Ref. Case No. 6 of 1906, M. H. C.; Mad. B. P. No. 226/8820 R. Mis. 14th Nov. 1906.

summonses for witnesses; and whereas it will tend to the despatch of business to commute such fees for a duty to be levied by means of stamps; and whereas it is expedient to extend the same principle of improving the public revenues to bonds, deeds of conveyance and other instruments executed by individuals, and also to certain petitions preferred to the Magistrates, in order to discourage the numerous petty complaints preferred to or brought before them from improper motives, an enquiry into which not only occupies a large proportion of their time, but is often the occasion of considerable expense and vexation to the parties complained against. "

Regulation XVIII of 1827.—The rates of duty prescribed in this Regulation were the same as in the previous Regulation except that no stamp was required for a bond or other instrument of a value not exceeding 16 rupees, and one anna was the duty on such instruments of a value above 16 rupees and not exceeding 32 rupees. The important provisions of this Regulation were :—(1) An instrument though executed within any of the zillahs subordinate to the Presidency of Bombay, if intended to take effect beyond them, was to be received as a valid instrument if it bore the stamp required for such instrument in Great Britain or any of the Governments of British India within which it was originally intended to take effect, or if it were subsequently impressed with the stamp that would have been required had it been executed to take effect within the zillah. (2) Such an instrument though executed beyond the zillahs would not be valid unless duty stamped, if originally expressly intended to take effect within the zillahs. (3) Provision was made for the use of optional stamp in the cases of instruments which were not for a specific sum or did not specify the value of the property transferred; but no judgment could be given thereupon, beyond the utmost sum which could be secured by the stamp used.

This Regulation was amended (1) by Regulation VIII of 1830, which required the papers to be counterstamped at the " Mint " instead of at the General Treasury ; (2) by Regulation XIV of 1831 which provided for their authentication by Collectors and their Assistants instead of by the Superintendent of Stamps, and (3) by Act XV of 1849 which repealed the provisions relating to the use of particular stamped materials.

GENERAL ACTS.

Acts XIV of 1840, *IX of* 1842 *and XV of* 1859.—Prior to the passing of Act XXXVI of 1860, which was the first general Act applicable to the three Presidencies, there were three minor Acts :—(1) Act XIV of 1840, section 8 of which rendered a written memorandum necessary to the validity of certain promises and engagements by extending to the territories of the East India Company, in cases governed by English Law, the provisions of the Statute, 9 Geo. IV, cap. XIV. This Act was repealed by Act XVIII of 1869, having been in force from 29th June 1840 to 1st January 1870. (2) Act IX of 1842, which extended to the territories of the East India Company from the 1st day of October 1842, the provisions of 4 & 5 Vic., cap. 21, entitled "An Act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties." Section 1 of the above English statute provided "that every deed or instrument of release of a freehold estate, or deed or instrument purporting or intending to be a deed or instrument of release of a freehold estate, which shall be executed on or after the fifteenth day of May 1841, and shall be expressed to be made in pursuance of this Act, shall be as effectual for the purposes therein expressed, and shall take effect as a conveyance to uses or otherwise, and shall operate in all respects both at law and equity as if the releasing party or parties who shall have executed the same had also executed in due form a deed or instrument of bargain and sale or lease for a year for giving effect to such release, although no such deed or instrument of bargain and sale or lease for a year shall be executed: Provided that every such deed or instrument, so taking effect under this Act, shall be chargeable with the same amount of stamp duty as any bargain and sale or lease for a year would have been chargeable with (except progressive duty), if executed to give effect to such deed or instrument, in addition to the stamp duties which such deed or instrument shall be chargeable with as a release or otherwise under any Act or Acts relating to stamp duties." This Act, IX of 1842, was declared to be in force in the whole of British India except in certain Scheduled Districts. It was repealed in places to which the Transfer of Property Act extends or is extended (*see* Act IV of

1882, s 2, and the Schedule to the Act). (3). The third minor Act is Act XV of 1859 (An Act for granting exclusive privileges to inventors); s. 37 of this Act which provided for the use of a stamped paper of Rs. 100 in the case of a petition for leave to file a specification of an invention was repealed by Act XVIII of 1869 by being incorporated in it, having been in force from 17th May 1859 to 1st January 1870. The provision relating to invention which was contained in the Act of 1869 was continued in the Act of 1879, but was repealed by the Inventions and Designs Act, V of 1888; (*see* Fourth Schedule to the Act for fees).

Act XXXVI of 1860.—This was the first general Act of the Governor-General in Council relating to stamp duties in British India and came into force on the 1st October 1860. It repealed the previous Regulations in force in the three Presidencies and was enacted in their stead. The following are some of the important provisions of the Act:—All deeds were chargeable with duty, for Article 26 of Schedule A made all deeds not otherwise particularized in the Schedule to the Act chargeable as agreements. Schedules annexed to certain instruments were also chargeable with duty (Art. 48). Bills of exchange alone and no other instruments executed out of British India were chargeable with duty Under section 13 instruments could be stamped after execution by the Collector *only* when the omission to stamp duly arose from *accident, ignorance, inadvertence, mistake or from other unavoidable cause*; and the Civil Courts could receive a document not duly stamped in evidence on payment of duty and penalty in all cases in which the Collector could impress the stamp on payment of duty and penalty. On the production of the unstamped document from the Court with its endorsement to the effect that duty and penalty were levied, the Collector caused it to be stamped with a stamp equal in value to the amount paid into Court. The rule as to stamping after execution did not apply to bills of exchange or to other forms of orders for money or to receipts for money. The power of the Collector to determine whether a document could be stamped after execution was final, except where he refused to stamp the deed. The use of optional stamp was allowed by this Act. Prior to this Act, Bombay Regulation XVIII of

1827 alone contained a similar provision Before October 1860, instruments exempted from duty were described in the Regulations themselves. For the first time in section 18 of this Act, power was reserved to the Governor-General in Council to reduce or remit stamp duties on instruments by notification in the official Gazette. This power did not extend to bills of exchange or other instruments classed as bills of exchange. Facts affecting duty were required to be set forth in the case of conveyances only. The Act contained provisions regarding allowances for spoiled stamps and offences relating to stamps. In the Act itself the rules relating to the vending of stamps and the duties of stamp-vendors were set forth. All instruments to which Government was a party were exempt. Instruments might be written on one or more stamps, if the value of the stamps used amounted to the value required by the Act.

Acts XL of 1860 *and LI of* 1860.—Act XL of 1860 suspended the operation of Act XXXVI of 1860 till the 1st January 1861, in respect of bills of exchange, promissory notes and other orders and obligations for payment of money, not being bonds or other writings bearing the attestation of one or more witnessess, if payable at any period not exceeding one year after date or sight. Act LI of 1860 delayed the operation of Act XXXVI of 1860 in respect of foreign bills of exchange until the date fixed by the Governor-General in Council [5th October 1861; *see* Notification No. 188, 5th October 1861].

Act X of 1862.—This Act came into force on the 1st June 1862. It consolidated and amended the previous Acts, including Act XXXVI of 1860. The provisions of this Act are almost the same as those of Act XXXVI of 1860. The important changes or additions made in this Act are the following:—(1) Drawing with intent to evade duty a post-dated bill of exchange, or accepting, etc., such bill, was made an offence. (2) Instruments executed on paper not bearing the proper stamp could be duly stamped after execution on payment of duty and penalty, if the neglect or omission to execute the deed on paper bearing the proper stamp did not arise from any *intention to evade* payment of the duty, or otherwise *to defraud* the Government. (3) Provision was made for adjudication of duty by the Board

of Revenue or the Chief Controlling Revenue Authority on payment of an adjudication fee of ten rupees. (4) A person receiving an unstamped draft or order for payment of money on demand could affix thereto the necessary adhesive stamp, cancel the same and charge the duty against the person who ought to have paid the same. (5) The power given to the Governor-General in Council to reduce or remit stamp duties on deeds was extended to all instruments including bills of exchange by s. 33. This section was repealed by Act XVIII of 1865, and another section with the like provision was substituted for it. (6) Persons on whose information any offender was convicted were rewarded with a portion of the fine imposed. (7) The following instruments were made chargeable with special duties by this Act:—certificate of shares; separate covenant made on the sale or mortgage of immoveable property: duplicate or counterpart of certain instruments; note of protest by the master of a ship; shipping order and warrant for goods.

Act XVIII of 1865.—Section 2 of this Act repealed section 33 of Act X of 1862 and substituted another provision in lieu thereof.

Act XXVI of 1867.—Section 5 of this Act made 'proxy' chargeable with duty. Since this Act came into force, the laws relating to Stamps and Court-fees were kept separate.

Act XVIII of 1869.—This Act came into force on the 1st January 1870 and consolidated and amended the Act of 1862. It was styled "The General Stamp Act, 1869." The important additions and alterations made in this Act, were:—(1) Interpretations or definitions of the various instruments made chargeable with duty were given. (2) The Stamp Acts of 1860 and 1862 contained no provision for stamping documents executed out of British India except bills of exchange. This Act for the first time imposed duties on foreign instruments relating to any property within British India and on promissory notes executed out of British India and negotiated here. (3) Instruments purporting for distinct considerations to sell, lease, give, or mortgage two or more subject-matters were made chargeable with the aggregate amount of duties with which separate instruments each relating to such matters or considerations would be

chargeable. (4) All the exemptions were grouped together and put under section 15 instead of being placed as before under the appropriate headings or articles in the schedules. (5) The power to impound unstamped documents which was given by Bengal Regulation X of 1829 was withdrawn by Act XXXVI of 1860. This Act of 1869 gave the option to Civil Courts to impound documents not duly stamped, but other public officers and registering officers were bound to impound them. (6) Foreign instruments other than bills of exchange and promissory notes could be stamped by the Collector on payment of duty, only if brought within three months next after their arrival in British India. (7) Where property was transferred subject to the payment of any debt, the debt was to be taken as part of the consideration for the transfer. (8) The Collector and not the Chief Controlling Revenue Authority was authorised to adjudicate the stamp duty on instruments on payment of adjudication fees and of the penalty, if any, incurred through the instrument having been executed on insufficiently stamped paper. (9) All orders and certificates of the Collector were open to revision by the Chief Controlling Revenue authority. (10) With a view of obtaining an authoritative construction of the Stamp Law for the guidance of courts and public officers, the Chief Controlling Revenue Authority was authorised to refer doubtful cases to the High Court to be decided by at least three Judges. (11) The Act authorised every Local Government to frame rules for regulating the sale of stamps, for determining the persons by whom they were to be sold, etc., instead of such rules being contained in the Act itself as in the previous Acts of 1860 and 1862. (12) The Act prohibited the use of more than one stamp when the duty chargeable did not exceed one thousand rupees and when a single stamp for the amoun required was readily procurable. (13) Only those instruments which were mentioned in the schedules were liable to duty ; so a ' schedule ' appended to a deed of sale did not require to be stamped under this Act, nor would it be a ' collateral instrument ' under Art. 15, Sch. II. (14) Provision was made for he valuation of annuities. (15) An instrument of further charge on mortgaged property was made chargeable with *ad valorem* duty on the subsequent advance,

(16) Duties on life policies were remitted altogether. (17) Instruments regarding appointment of trustees and declaration of trust which were exempt from duty under the Acts of 1860 and 1862 were made chargeable with duty by this Act. (18) Instruments chargeable with fixed duties were thrown in one schedule and those chargeable with *ad valorem* duties in another schedule. (19) Bills or notes payable at a period exceeding one year after date or sight were chargeable as bonds under the Acts of 1860 and 1862. This distinction between bills and notes executed for short terms and those executed for long terms was not kept in this Act. (20) Under the law in force prior to this Act no instrument to which Government was a party was liable to duty, but by this Act such instruments were exempted only when under its other provisions, the obligation to bear the cost of such duty rested upon Government.

Act I of 1879.—This Act repealed the General Stamp Act, XVIII of 1869 and consolidated and amended the previous Stamp Law. It came into force on the 1st of April 1879 and was enacted largely upon the lines of the English Stamp Act of 1870. (1) The terms "chargeable" and "duly stamped" were defined; and the definitions of the terms "bond," "policy of insurance" and "receipt" were enlarged. (2) Instruments executed out of British India were made chargeable with duty not only when they related to any property situate in British India, but also when they related to any matter or thing done or to be done in British India. (3) Power was given to the Governor-General in Council to reduce or remit duties prospectively as well as retrospectively. (4) The number of stamps to be used for stamping any instrument was to be fixed by rules framed by the Governor-General in Council instead of being fixed by a substantive provision of the Act itself. (5) The mode of writing instruments on impressed stamps and the effect of non-compliance with this mode were first stated in ss. 13 to 15 of this Act. (6) Provisions were made as to (i) valuation of stock and marketable securities, (ii) effect of statement of rate of exchange or average price, and (iii) calculation of duty for certain conveyances. (7) The express provision in the Act of 1869, *viz.*, that where a transfer of property was made subject to the payment of a debt, the debt should be

deemed a part of the consideration, notwithstanding the transferee was not, or did not become, personally liable for such debt, or did not agree to pay the same, was omitted in this Act (8) Instruments other than instruments chargeable with the duty of one anna, bills, notes and cheques, could be stamped after execution by the Collector, and also admitted in evidence on payment of duty and penalty, whether the omission to duly stamp arose from an *intention to defraud Government or not*. (9) The power to examine all instruments coming before them in the execution of their duty and the duty of impounding such as appeared to have not been duly stamped, were extended to all persons having by law or consent of parties authority to receive evidence, and to all executive officers having charge of any office, except police-officers. (10) The validity of any instrument which had been once admitted in evidence was not to be called in question simply on the ground that it was not properly stamped. This important provision set at rest the conflict of opinion on this point under the previous Acts. (11) Duty and penalty paid by persons other than those legally bound to pay the same could be recovered from the persons so bound. (12) The power of the Collector to institute criminal prosecutions was restricted to a certain class of cases. (13) Under the Act of 1869, all certificates and orders of the Collector were open to revision on appeal or otherwise by the Chief Controlling Revenue Authority. This provision was omitted in the Act of 1879; but the Collector was allowed to refer to the Chief Controlling Revenue Authority when he felt doubt as to the duty chargeable; so also subordinate Courts could refer to the High Court doubtful cases. (14) Certain decisions of Revenue and Civil Courts regarding the sufficiency of stamps were made subject to revision by Courts to which appeals lay from, or references were made by, the first mentioned Courts. (15) The penalty for post-dating bills and notes imposed by s 13 of Act X of 1862 was revived in this Act; making out or delivering a policy of insurance not duly stamped was also made an offence.

The changes made in the schedules were—(i) The schedules of *ad valorem* and fixed rates of stamp-duty were amalgamated and thrown into a single schedule, and the alphabetical

order of arrangement of instruments was substituted for the classification according to rates. (ii) The rule in regard to the duty leviable on bills and notes made payable at some time exceeding one year which was in force previous to the passing of the Stamp Act of 1869 was revived. (iii) The Act provided for a *direct* increase of duty in the case of—(*a*) bonds, conveyances, leases, mortgages and settlements, when the amount involved exceeded Rs. 10,000; (*b*) bonds and other instruments chargeable as bonds, where the amount involved exceeded Rs. 10, but did not exceed Rs. 25; and (*c*) policies of insurance other than insurance against risks by sea. (iv) The Act substituted *ad valorem* duties for fixed duties in the case of instruments guaranteeing repayment of loans at short periods, and instruments of gift, exchange and partition. (v) It imposed *new* duty on (*a*) the entry of an advocate, vakil or attorney on the roll of any High Court; (*b*) bought and sold notes; (*c*) revocation of trust; (*d*) and policy of life insurance which was exempt under the Act of 1869 but liable under the previous Acts. (vi) It *reduced* the maximum limit of *ad valorem* duty regarding four classes of instruments, *viz.*—(*a*) Indemnity bonds; (*b*) Security bonds; (*c*) Transfers of interest secured by certain instruments; and (*d*) Surrenders of leases.

The second schedule to the Act contained the exemptions. They were for the most part reproduced from certain enactments in force prior to the passing of the Act of 1879 or from Notifications issued by the Government under the powers conferred by the Act of 1869.

Amendments.—The material amendments made by the new Act are the following:—(i) (*a*) Definitions of the terms 'bill of exchange,' 'bill of exchange payable on demand,' 'executed,' 'execution,' 'impressed stamp,' 'instrument' and 'promissory note' have been supplied. (*b*) The definitions of the following terms have been amended or altered:—'bill of lading,' 'cheque,' 'conveyance,' 'duly stamped,' instrument of partition,' policy of insurance,' 'power of attorney,' 'receipt' and 'settlement.' (*c*) The definitions of 'vessel,' 'writing,' and 'schedule' have been omitted as unnecessary, having now been introduced in the General Clauses Act.

(ii) Power is given to the Governor-General in Council to compound and consolidate duties in the case of issues of debentures (S. 9). (iii) A method of cancellation of adhesive stamps is provided (S. 12) (iv) The Governor-General in Council is authorised to prescribe from time to time by Notification the rates of exchange for the conversion of certain currencies instead of the same being done as heretofore by a substantive provision of the Act (S. 20). (v) The Explanation and Illustrations to S. 24 set at rest the conflict of views of the High Courts in respect of the duty to be levied in the case of sale of a property subject to an incumbrance. (vi) Special provision is made for the case of a lease of a mine of which the rent is a share of the produce, that is, any person who chooses to assess the share of the produce at 20,000 rupees a year may recover any amount in excess of that estimate without regard to the limit covered by the duty paid (S. 26). (vii) The new sec. 34 authorises an audit officer of public accounts before whom an unstamped receipt is produced to require the substitution of a duly stamped receipt without impounding it. (viii) Unstamped receipts could be admitted in evidence on payment of a penalty of one rupee.

(ix) Proviso (e) to section 35 introduces two important changes, *viz.*, (a) when an instrument is executed by or on behalf of Government, it shall not be objected to for want of a stamp or for an insufficient stamp, *i.e.*, "the omission of a Government officer to see that an instrument is duly stamped shall not prejudice the rights of the parties to have the document admitted in evidence." The object of this new provision is probably to obviate the difficulties often felt in the application of the provision (Proviso to s. 3), which exempts from stamp-duty instruments executed by or on behalf of Government, where, but for the exemption, Government would be liable to pay the duty chargeable in respect of such instrument. The effect of this new provision would therefore be to bring the question of the levying of duty in such cases under "the control of executive instructions to the officers of Government, directing them when they should and when they should not insist on an instrument being duly stamped"; (b) in the various cases in which under the Act the Collector gives a certificate that the

duty is sufficient, that certificate shall not afterwards be questioned in any Court—this provision, no doubt, being for the benefit of the public.

(x) Section 37 is a new section, the object of which is to give the Governor-General in Council power to lay down rules for properly stamping a document which has been properly stamped so far as regards the amount but not properly stamped so far as regards the class of stamp used. (xi) Under the Act of 1879 the Collector was required either to impose the minimum penalty of five rupees or where ten times the duty exceeded five rupees, a penalty not exceeding ten times the proper duty; but under the present Act, the Collector is allowed to use a discretion to take ten times the proper duty whether such amount exceeds or *falls short* of five rupees; where of course ten times the duty exceeds five rupees, he must levy at least five rupees (xii) Where a party to a suit has been obliged to pay stamp-duty or penalty through the default of the other party, the duty or penalty so paid may be included in the costs of the suit, and, if not so included, cannot be recovered by a separate suit (xiii) Excess of duty wrongly recovered by the Collector may be now refunded by the Chief Controlling Revenue Authority directly, if it thinks fit, instead of its proceeding as under Act I of 1879 by the circuitous course of obtaining the opinion of the High Court as to the proper duty chargeable on the instrument (S. 45). (xiv) Section 48 provides for the first time a procedure for the recovery of duty and penalty, and expressly provides that they are to be recovered from the person from whom the same are due. (xv) Section 51 gives a new power to the Chief Controlling Revenue Authority to make allowances for stamp papers used for printed forms by incorporated companies, when such forms have ceased to be required by them; allowance is also ordered on renewal of certain debentures (S. 55). (xvi) S. 56, para. 1, restores the power of revision possessed by the Chief Controlling Revenue Authority under the Act of 1869.

(xvii) Where an offence is compounded, the agreed amount of composition can be recovered as if it were a penalty under section 48 (S. 70) (xviii) Power is given to the Collector to trace documents not duly stamped in the custody of any public

officer (S 73). (xix) Private sale of one anna adhesive stamps is permitted (Ss. 69 and 74) (xx) The rules made under this Act by the Governor-General in Council and Local Governments are to have effect as if enacted by this Act (S. 76).

The *changes* in the schedule to the Act are :—

(1) Several changes in form have been made :—(a) The alphabetical order has been improved. (b) Exemptions have been removed from their position in a separate schedule of exemptions and placed in the schedule of duties under the articles to which they refer. Some of the reductions and exemptions which were made by Notifications under the Act of 1879 have been reproduced in the Act itself, and some of the exemptions which were mentioned in Schedule II of the Act of 1879 have been omitted from the present Act and included in the list of exemptions announced by Notification under section 9. (c) The ascertainment of duty has been made more direct and more easy. For example, the three tables of duty under the heads of bill of exchange, bond and conveyance are drawn up in a very curtailed form in Act I of 1879 It is impossible, when considerable amounts are involved, without the aid of paper and pencil, to make out from the different tables the duty payable on a particular instrument. The tables have been extended to make it easy for a person by a reference to the schedule to ascertain directly what the particular duty is. (d) The schedule has been altered in another respect by the improvement of references; "for example, if you want to find the duty on an administration bond, you are referred to security bond; and if you turn to security bond, you are sent to find the proper duty under the head 'bond.' There are several cases of double reference of this kind," and in these cases the reference has been made direct.

(2) The cases in which the duty has been *increased* or duty which was not imposed under the Act of 1879 has been *imposed* under this Act are—(a) Bills of exchange and promissory notes payable on demand and cheques for an amount of less than twenty rupees; (b) Instrument recording adoption; (c) Instrument of cancellation, if attested and not otherwise provided for; (d) Debenture; (e) Instrument of further charge; (f) Memorandum of association of a company; (g) Perpetual

lease; (h) Power-of-attorney when given for consideration and authorising the attorney to sell any immoveable property; (i) Revocation of settlement. (j) Transfer of certain debentures mentioned in Article 62; and transfer of trust property from a trustee to a beneficiary. The duty of one anna is levied upon only acknowledgments pure and simple, and not upon acknowledgments containing in addition any promise or agreement. The duty on share warrants has been introduced from the Companies Act, 1882.

(3) The duty has been *reduced* in the following cases;—(a) Certificate of sale where the purchase-money does not exceed Rs. 25: (b) Instrument of partition; (c) Partnership, where the capital of the partnership does not exceed Rs. 500; (d) Instrument of partiton or settlement subsequently executed in pursuance of an agreement to partition or settle when such agreement is stamped with the stamp required for the partition or settlement; (e) Insurance against accident or sickness; (f) Re-insurance; (g) in the cases of declaration and revocation of trust and transfer of trust property from one trustee to another trustee, the fixed duty prescribed by the Act of 1879 is made the maximum duty chargeable on the instrument, but in the case of small transactions the benefit of a smaller duty is given by *ad valorem* duty being prescribed.

General principles bearing on the incidence of taxation.—"Fiscal enactments scarcely lend themselves to generalisation in the way of rules of construction; they have been said to be *positivi juris*. You must interpret with strict regard to the literal meaning of the Legislature's language" (*a*); but the following principles may be stated as bearing upon the question of the incidence of the charge:—

1. *Duty on instruments.*—Stamp duty is charged on instruments (s. 3), and the Crown cannot levy the duty unless the parties to a transaction choose to effectuate it by an instrument (*b*). There are cases, however, in which the law compels

(*a*) Ency. of the Laws of England, Vol XI. Morley *v.* Hall (1834), 2 D. P. C. 494; Tennant *v.* Smith [1892], A. C. 150.

(*b*) Commissioners of Inland Revenue *v.* Angus & Co. (1889), L. R. 23 Q. B. D., 579, at p. 593.

the parties to a transaction to embody it in an instrument. The Government is not bound by the provisions of the Stamp Act (s 3, Proviso).

2 *Instruments liable to duty.*—Instruments (a) executed in any part of British India, or (b) relating, wheresoever executed—(i) to any property situate in British India, or (ii) to any matter or thing done or to be done in any part of British India and received in British India, are liable to duty, but a bill of exchange, cheque or promissory note executed out of British India is rendered liable to duty only by reason of subsequent dealings with the instrument in British India, *e.g.*, endorsement, payment or negotiation of it in British India (S. 3).

3. *Facts affecting duty.*—Although the parties to a transaction may dispense with an instrument in certain cases, they are bound, if they have one, to state fully and truly the consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it is chargeable.

4. *Time of stamping deeds.*—Instruments charged with duty and executed in British India must be stamped before or at the time of execution (S. 17.) Generally, instruments executed out of British India may be stamped within three months after they have been first received in British India (S. 18.) If not stamped at the time of execution in the former case, or within three months after being received in British India in the latter case, a penalty is leviable in addition to duty. But sections 32 and 41 allow in certain cases the stamping after execution on payment of duty only.

5. *Classification of duties.*—Duties are imposed on three distinct bases: (a) Fixed duties are imposed on documents satisfying a given description or definition, as the duty of one anna on every cheque irrespective of its amount; (b) *Ad valorem* duties dependent on the amount or value of the consideration set forth in the instrument, as conveyance, lease, etc.; (c) The *ad valorem* duties in India are based on the principle of the English Law, *i. e.*, the duty is assessed at the uniform rate of percentage on the maximum amount of each ascent, and adjusted to the English standard—the rupee and its halves and

quarters being taken as the equivalents of the shilling, its halves and quarters respectively, and the anna as equal to the penny. Instruments chargeable with *ad valorem* duties specified in the first schedule to the present Act, except the following—bill of exchange or promissory note payable otherwise than on demand but not more than one year after date or sight, agreement by way of equitable mortgage, or relating to pawn or pledge of goods and policy of insurance—are chargeable either as bonds or conveyances with a half per cent or one per cent. scale of duty respectively.

THE INDIAN STAMP ACT, 1899.

ACT No. II OF 1899.

(AMENDED BY ACTS Nos. VI OF 1900, XV OF 1904, V OF 1906, VI OF 1910, I OF 1912, IV AND X OF 1914.)

[*Received the assent of His Excellency the Governor-General on the 27th January 1899.*]

CONTENTS.

THE INDIAN STAMP ACT.

ACT No. II OF 1899.

(AMENDED BY ACTS NOS. VI OF 1900, XV OF 1904, V OF 1906, VI OF 1910, I OF 1912, IV AND X OF 1914.)

An Act to consolidate and amend the Law relating to Stamps.

WHEREAS it is expedient to consolidate and amend the law relating to stamps; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. (1) This Act may be called the Indian Stamp Act, 1899.

Extent.

(2) It extends to the whole of British India *inclusive of* * * *[1] *British Baluchistan, the Santal Parganas and the Pargana of Spiti*; and

Commencement.

(3) It shall come into force on the first day of July, 1899.

[This Act repeals Stamp Act I of 1879 and certain other Acts. See section 79 and Schedule II to this Act.]

Consolidate and Amend:—The title and the preamble of this Act show that it is not only a consolidating Act but also an amending Act. A consolidating Act is an Act which reduces into a systematic form the whole of the statute law relating to a given subject, as illustrated or explained by judicial decisions. With regard to Acts which may either amend, or consolidate and amend previous Acts of the Legislature, the question how far previous legislation may be resorted to as an aid towards the construction of the later Acts has to be considered. In the

[1] The words "Upper Burma" were repealed by Act X of 1914.

case of *The Administrator-General of Bengal* v. *Prem Lall Mullick* (*a*) the Calcutta High Court referred to a previous enactment on the same subject in aid of the construction of the Administrator-General's Act, II of 1874 (An Act to amend and consolidate). But the Privy Council before whom the case came in appeal held that (1) "a *positive* enactment in a statute of 1874 cannot be qualified or neutralized by indications of intention gathered from previous legislation upon the same subject;" (2) that it is against reason and authority to maintain the proposition "that in dealing with a *consolidating statute*, *each enactment must be traced to its original source*, and when that is discovered, must be construed *according to the state of circumstances which existed when it first became law*. The very object of consolidation is to collect the statutory law bearing upon a particular subject and to bring it down to date in order that it may form a useful Code applicable to the circumstances existing at the time when the consolidating Act is passed."(*b*) The essence of a Code is to be exhaustive on the matters in respect of which it declares the law and it is not the province of a judge to disregard or go outside the letter of the enactment according to its true construction (*c*).

It should not be supposed that this decision of their Lordships of the Privy Council entirely prohibits reference to previous legislation. Previous legislation may still be referred to as an aid towards construction when the Act is not *positive, clear and express*. (*d*) The observations of the Privy Council with reference to a consolidating statute appear to refer to cases where the two sets of circumstances differ, for in the case of *In re Mew* (*e*) a consolidating Act was construed with reference to circumstances existing at the time of the earlier Act, which,

(*a*) (1894), 21 Cal. 732.

(*b*) (1895), 22 Cal. 788 at pp. 797-8.

(*c*) Gokhul Mandar *v.* Pudmanund Singh, (1902) 29 Cal. 707; *cf.* Mohori Bibee *v.* Dharmodas Ghose, (1903) 30 Cal. at p. 548.

(*d*) The Bank of England *v.* Vagliano, Brothers, cited at p. 7, *infra*; Norendra Nath Sircar *v.* Kamal Basini Dasi, 23 Cal. 563; Kripa Sindhu Mukerjee *v.* Annada Sundari Debi, 35 Cal. 32, at p. 55; Bell *v.* The Municipal Commissioners, 25 Mad. 457, 499-500; Robinson *v.* Canadian Pacific Ry. Co. [1892] A. C. 481.

(*e*) 31 L. J. Bankruptcy, 87.

however, *had not changed* (as they had in the Privy-Council case) at the time of the later Act (*a*).

The following rules of construction of a statute were laid down in the case of *The Bank of England* v. *Vagliano Bros.* (*b*) by Lord Herschell, when dealing with the English Bills of Exchange Act which was intended to be a Code of the law relating to negotiable instruments:— "I think the proper course is, in the first instance, *to examine the language of the statute, and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law* and not to start with inquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a statute intended to embody in a Code a particular branch of the law is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used, instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding, such as a demurrer to evidence. *I am, of course, far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the Code.* If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or again, if, in a Code of the law of negotiable instruments, words be found which have previously acquired technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the Code. I give these as examples merely; they, of course, do not exhaust the category. *What, however, I am venturing to insist upon is that the first step taken should be to interpret the language of the statute, and that an appeal to earlier decisions can only be*

(*a*) *See* 5 M. L. J. R., 290. (*b*) [1891] App. Cas., 107.

justified on some special ground." The above observations were approved of by the Privy Council in *Norendra Nath Sircar* v. *Kamalbasini Dasi*, (*a*) in dealing with a case under the Indian Succession Act (An Act to amend and define the law of Intestate and Testamentary Succession.)

If a distinction is to be drawn between statutes which codify and those which consolidate the law, it is that in construing the latter there is a presumption that the law was not intended to be altered (*b*). So where an Act is a consolidating Act and does not profess to amend or alter the provisions of the Acts consolidated, *prima facie*, the same effect ought to be given to its provisions as were given to those of the Acts for which it was substituted (*c*).

Proceedings of the Legislature.—" Where an Act is considered *not* to clearly express the intention of the Legislature, the Courts used to consider also as aids towards construction, (a) the Statement of Objects and Reasons, * attached to Bills ; (b) Proceedings of the Legislative Council ; and (c) Reports of the Select Committee."

Statement of Objects and Reasons : Report of the Select Committee.—The question of the right to make use of some of these aids to construction came before the Privy Council in *The Administrator-General of Bengal* v. *Prem Lall Mullick* (*d*) The Calcutta High Court, in this case, (*e*) in aid of the construction of Act II of 1874 (The Administrator-General's Act), referred to (1) the *Statement of Objects and Reasons* and (2) *Report of the Select Committee*. With regard to these the Privy Council observed as follows :—" The two learned Judges who constituted the majority in the Appellate Court, although they do not base their judgments upon them, refer to the *proceedings of the Legislature which resulted in the passing of the Act of* 1874, as legitimate aids to the construction of Section 31. Their Lordships

(*a*) (1896), 23 Cal., 563.

(*b*) Halsbury's Laws of England, Vol. 27, p. 199.

(*c*) Mitchell *v.* Simpson, 25 Q. B. D. 183 at pp. 190, 192.

(*d*) (1895), I. L. R., 22 Cal., 788 ; S. C. L. R., 22 I. A., 107.

(*e*) (1894), I. L. R., 21 Cal., 732.

* The practice of presenting a Bill with the Statement of Objects and Reasons dates from 1862. *See* Calcutta Gazette, 1862, p. 190.

think it right to express their dissent from that proposition. *The same reasons which exclude these consi lerations when the clauses of an Act of the British Legislature are under construction are equally cogent in the case of an Indian Statute.*" (*a*)

Proceedings of the Legislative Council.—" Upon a reference to some of the terms of the Privy Council judgment, it would seem that reference to these is not now permissible. But the view of the Privy Council itself is at variance with that of Lord Westbury in *In re Mew*, 31 L. J., Bankruptcy, 87, where the Lord Chancellor read a speech made in the House of Commons by the Member who introduced the Bankruptcy Bill of 1860. The Privy Council also in *Hebbert* v. *Purchas*, L. R., 3 P. C. 648, 649, referred to the Commons and Law Journals, and to the details of a Conference between the two Houses of Parliament. And in *The Queen* v. *Bishop of Oxford*, 4 Q. B. D., 535, Bramwell, J., heard passages from the Lord Chancellor's speech made in the House of Lords upon the Church Discipline Act." (*b*)

Interpretation of fiscal enactments.—Till very recently fiscal enactments were construed in a peculiar manner in English Courts. The English authorities have been to the effect that a taxing Act ought to be construed strictly, and a tax should not be considered to be imposed on the subject without a plain declaration of the intent of the Legislature to impose it and that in a matter of doubt the construction most beneficial to the subject ought to be adopted.(*c*) The Indian cases are to the same effect.(*d*)

(*a*) I. L. R., 22 Cal., pp. 799-800.

(*b*) Ameer Ali and Woodroffe on the Law of Evidence, 2nd Edition, Introduction, p. cxxxv. *See* the article on this subject in 5 M. L. J. 283.

(*c*) Cox *v.* Rabbits (1878), 3 App. Cas., 478 ; Bryce *v.* Monmouthshire (1879), 4 App. Cas., 202; Oriental Bank Corporation *v.* Wright (1880), 5 App. Cas., 842, at p. 856 ; Commissioners of Inland Revenue *v.* Angus (1889), L. R., 23 Q. B. D., C. A., 579, at p. 589; Denn *v.* Diamond (1825), 4 B. &. C., 243, 245 ; Doe d. Scruton *v.* Snaith (1832), 8 Bing., p. 152 ; Harris *v.* Birch (1842), 9 M. & W., at p. 594 ; Nicholson *v.* Fields (1862), 283, 295 ; Hall Dock Co. *v.* Brown (1831), 2 B. & Ad., pp. 58, 59 ; Cf. *In re* Thorley, [1891] 2 Ch., 613, 623 (C.A.) ; Stockton Railway Co. *v.* Barrett (1844), 11 Cl. & F., 590, 601.

(*d*) Ref. (1885), I. L. R., 9 Mad., 146, 148 ; Anonymous Case (1884) I. L. R., 10 Cal., 274, at pp. 275, 282 ; Megji Hansraj *v.* Ramji Joita (1871),

In the recent case of *Swayne* v. *Commissioners of Inland Revenue*,(*a*) Wells, J., said:—"I would observe that the art of interpreting statutes of this character—statutes which impose taxation—cannot be considered an exact science; it is rather a practical art, and the questions which arise cannot be dealt with as though they were simple questions to be settled upon principles of Common Law." But in the more recent case of *Attorney-General* v. *Carlton Bank*,(*b*) Lord Chief Justice Russell observed on the method of interpretation of a taxing Act thus:—

"In the course of argument reference was made on both sides to supposed special canons of construction applicable to Revenue Acts. For my part I do not accept that suggestion. I see no reason why special canons of construction should be applied to any Act of Parliament, and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of the Court is, in my opinion, in all cases the same, whether the Act to be construed relates to taxation or to any other subject, *viz.*, to give effect to the intention of the Legislature, as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed. The Court must no doubt ascertain the subject-matter to which the particular tax is by the statute intended to be applied, but when once that is ascertained, it is not open to the Court to narrow or whittle down the operation of the Act by seeming considerations of hardship or of business convenience or the like. Courts have to give effect to what the Legislature has said."(*c*) On the above observations of the Lord Chief Justice

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8 Bom., H. C. R., O. C., 169; *In re* The Port Conservancy Land Co., Ld. (1871).16 Suth., W. R., 208; Empress *v.* Saddanund Mahanty (1881), I. L. R, 8 Cal., 259, 262; Girdhar Nagjishet *v.* Ganpat Moroba (1874), 11 Bom., H. C. R., A. C., 129; Rainier *v.* Gould (1888), I. L. R., 13 Mad., 255, 268; Radha Bai *v.* Nathu Ram (1890), I. L. R., 13 All., 66, 74; Devchand *v.* Hirachand (1889), I. L. R., 13 Bom, 440, 455. Reference under the Stamp Act (1913), I.L.R. 25 M.L.J. 613; Mylapore Hindu Permanent Fund (Ld.) *v.* The Corporation of Madras (1908), I. L. R. 31 Mad. 408; In the matter of Shambhu Dayal (1914) 13, A. L. J. R. 96; Barrie *v.* Lachhman 28 P. L. R. 1914; Sukh Dial *v.* Mani Ram, 29 P. R. 1915.

(*a*) [1899], 1 Q. B., 335, 344. (*b*) [1899], 2 Q. B., 158-64.

(*c*) *See* the observations of Mookerjee, J. in Manindra Chandra *v.* Secretary of State, 34 Cal. at pp. 268-9.

the learned Editor of the *Law Quarterly Review* remarks(*a*): "It is refreshing from its broad common sense, and brushes aside a whole host of technical and unreal arguments constantly produced either for or against the Crown, whenever the incidence of a tax is in dispute. The two maxims, 'There is no reason why a taxing Act should be construed differently from any other Act,' and 'Courts have to give effect to what the Legislature has said,' are invaluable. We hope they will be noted by the writers of text-books, no less than by Judges. If properly weighed, these maxims will cancel many pages in treatises on the interpretation of statutes.

"But one exception can be taken to the language used by Lord Russell of Killowen. The words, 'I know of no authority for saying that a taxing Act is to be construed differently from any other Act,' go a little beyond the fact. Whoever chooses to look for it may find a good deal of authority, or, in other words, many dicta let drop by eminent Judges in favour of construing Revenue Acts in a peculiar manner,(*b*) nor, it may be added, were these dicta in themselves absurd. They are now worthless because they refer to a state of things which has passed away. When a tax was a real gift from the tax-payer to the king, it was reasonable to construe narrowly the terms of the grant. Now that the taxing Act is a law, passed by the nation for the raising of money required for the national expenditure, there is no apparent reason why it should be construed differently from any other statute."

General Construction of the Act.—The modern general rule of construction is that statutes must be construed according to their *plain* meaning, neither adding to nor subtracting from them (*c*). Though the words used in statutes are, as a general rule, to receive their natural and ordinary signification and the Courts in construing legislative enactments will adopt the popular meaning of words and phrases, this rule of construction is qualified by a distinct limitation explained in *Burton* v. *Reevell*(*d*), that when the Legislature uses technical language in its statutes, it is supposed to attach to it its technical meaning,

(*a*) Vol. XV, pp. 347-8, Law Quarterly Review.
(*b*) *See* the cases noted, *supra*, p. 9. (*c*) Maxwell, p. 2.
(*d*) (1847), 16 M. & W. at p. 309.

unless the contrary appears, and the reason of the rule is that such language is employed for the purpose of escaping difficulties in regard to matters precise and technical in their nature (*a*).

The Court knows nothing of the intention of an Act except from the words in which it is expressed, applied to the facts existing at the time (*b*). The Legislature must be taken to have intended to mean what it has plainly expressed, and that, when the word admits of but one meaning, a Court is not at liberty to speculate on the intent, or to construe an Act according to its notion of the reasons supposed to have been the cause of enacting it (*c*). The question is not what may be supposed to have been intended, but what has been said. More complete effect might in some cases be given to the intention of the Legislature, if violence were done to the language in which their legislation has taken shape; but such a course would on the whole be quite as likely to defeat as to further the object which was in view. Whilst, however, it is necessary to resist any temptation to deviate from sound rules of construction in the hope of more completely satisfying the intention of the Legislature, it is quite legitimate, when more than one construction of a statute is possible, to select that one which will best carry out what appears from the general scope of the legislation and the surrounding circumstances to have been its intention.(*d*)

If a statute upon which a particular construction has been long put is re-enacted *ipsissimis verbis*, this construction must be considered to have the sanction of this Legislature.(*e*) Likewise if Acts are framed using the forms of words or clauses in prior

(*a*) *Per* Mahmood, J., in Gopal Pande*y* *v.* Purstoam Dass (1882), I. L.R., 5 All. at pp. 136-7.

(*b*) Fordyce *v.* Bridges (1847), I. H. L., Cases 1-4: Logan *v.* Courtown (1851), 13 Beav., 22.

(*c*) Moonshee Buzloor Raheem *v.* Shamsoonissa Begum (1867), 8 W. R., P. C., 3, 12; Gureebullah Sirkar *v.* Mohun Lall Shaha (1881), I. L. R. 7 Cal., 127; Queen-Empress *v.* Balkrishna (1893), I. L. R. 17 Bom., 577-8.

(*d*) *Per* Lord Herschell, L. C., in Brophy *v.* Attorney-General of Manitoba, [1895] App. Cas., 216.

(*e*) Mansell *v.* R. (1857), 8 E. & B., 73; Nogendra Mohan Roy *v.* Pyari Mohan Saha, (1915) 21 C. L. J. 605.

Acts which have received judicial construction, unless a contrary intention appears, the Courts will presume that the Legislature has adopted the judicial interpretation, or has used the words in the sense attributed to them by the Courts.(*a*) And, conversely, if we find that the particular language employed by the Legislature in the earlier statutes on a particular subject has been departed from in a subsequent statute relating to the same subject, it is generally a fair presumption that the alteration in the language used in the subsequent statute was intentional.(*b*)

Construction of Instruments for purposes of Stamp duty :— See notes under S. 35, *infra*.

Extent—British India—These words mean "all territories and places within Her Majesty's Dominions which are for the time being governed by Her Majesty, through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India "(*c*). This definition has been taken from s. 18 (4) of the Interpretation Act, 1889 (52 and 53, Vict. c, 63) (*d*). The above definition is wider than that given in the General Clauses Act, I of 1868, which defined the term "British India" to mean "the territories for the time being vested in Her Majesty by the Statute, 21 and 22 Vict, c. 106" (An Act for the better government of India) ; s. 1 of which enacted that "all territories in the possession or under the Government of the East India Company and all rights vested in or which if the Act had not been passed might have been exercised by the said Company in relation to any territories shall become vested in Her Majesty and be exercised in Her name," and that "*India* shall mean the territories vested in Her Majesty as aforesaid and all territories which may become vested in Her Majesty by virtue of any such rights as aforesaid."

(*a*) *Ex parte* Campbell (1870), 5 Ch. App., 703, *per* James, L. J.; and *per* Lord Coleridge, C. J., in Barlow *v.* Teal (1884), 15 Q. B. D., 403.

(*b*) Cf. R. *v.* Buttle (1870), 1. C. C. R, 252, *per* Blackburn, J ; Casemont *v.* Fulton (1845), 5 Moore, P. C., 130, at. p. 141 ; *per* Cockburn, C. J., in R. *v.* Price (1871), L. R , 6 Q. B., 411.

(*c*) The General Clauses Act, X of 1897, S. 3 (7) ; and the Madras General Clauses Act, I of 1891, S. 3 (3).

(*d*) *See* Ilbert's Government of India, pp. 268-270.

British Baluchistan—Santal Parganas and Pargana of Spiti:—Sub-section (2) as amended by the Decentralisation Act X of 1914 provides that the Act extends to the whole of British India *inclusive of* British Baluchistan, the Santal Parganas and the Pargana of Spiti. The italicised words in the sub-section were added in the present Stamp Act. Though these territories form part of British India, it does not seem clear why the Legislature made special mention of them in defining the extent of the applicability of the Act. This sub-section before it was amended by the Decentralisation Act X of 1914 enacted that this Act extended to the whole of British India *inclusive of Upper Burma*. Now, because the definition of " British India " would include Upper Burma also, apparently it was thought unnecessary to make a special reference to Upper Burma and the words " Upper Burma " were therefore omitted (*a*) For the same reasons suggested above with reference to the omission of the words " Upper Burma " in this sub-section, specific reference to British Baluchistan (*b*), the Santal Parganas(*c*) and Pargana of Spiti (*d*) would have been unnecessary. It is not apparent why the territories are specifically mentioned, though they would come within the definition of " British India."

Scheduled Districts.—The expression is defined in the Scheduled Districts Act XIV of 1874 to mean the territories mentioned in the first schedule thereto annexed and also any other territory to which the Secretary of State for India, by Resolution in Council, may declare the provisions of 33 Vict. c. 43,

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(*a*) The Upper Burma Laws Act, XX of 1886, declared the Indian Stamp Act I of 1879 to be applicable to Upper Burma generally, as the territories formerly governed by King Thebaw and known as Upper Burma became part of British India.

(*b*) British Baluchistan Regulation I of 1890 enacted that the Stamp Act I of 1879 shall be applicable to British Baluchistan.

(*c*) This is a scheduled district under Act XIV of 1874. No Notification under S. 3 of the Act appears to have been issued. *See* Maha Prasad Singh *v.* Ramani Mohan Singh, 27 M. L. J. 459, 471. The Indian Stamp Act I of 1879 was in force in Santal Parganas under the Santal Pargana Regulation III of 1872.

(*d*) This is one of the scheduled districts in the Punjab. *Vide* Part V of Sch. I to the Scheduled Districts Act XIV of 1874.

S. 1, to be applicable. The territories mentioned in the said schedule are part of British India. The Scheduled Districts Act comes into force in each of the scheduled districts only on the issue of a notification under s. 3 of that Act. The mere fact of a district being declared to be a scheduled district does not exclude the Acts and Regulations in force in British India from their operation in the scheduled district. It is only on the issue of such a notification by the Local Government declaring what Acts are and what are not in force in the said districts the said Acts shall be deemed to be in force and binding on Courts(*a*). In virtue of the powers conferred on the Local Government by the Scheduled Districts Act, the Stamp Act has been declared to be in force in some of the scheduled districts mentioned in the first schedule annexed thereto. See Appendix F for the territories to which the Stamp Act has been so made applicable or in which it has ceased to be in force.

Territory outside British India.—The Governor-General in Council, in his executive capacity, has power under the Foreign Jurisdiction and Extradition Act XXI of 1879 (now the Indian Extradition Act XV of 1903) to make laws for Assigned Districts, Cantonments, Railways and other places over which jurisdiction has been conferred on the British Government. The laws so made do not derive their authority from the Indian or the English Legislature. "The extra-territorial powers of the Governor-General of India are much wider than the extra-territorial powers of the Indian Legislature, and are not derived from, though they may be regulated or restricted by English or Indian Acts (*b*). Under the powers thus conferred, the Governor-General in Council has extended the Stamp Act to the following territories, with modifications, details of which are given in Appendix F:—

Hyderabad Assigned Districts (Berars); Hyderabad Residency, Bazaars; Cantonment of Secunderabad; Contingent Stations of Aurangabad, Bolaram, Hingoli, Jalna, Mominabad

(*a*) Queen-Empress *v.* Cheria Koya, (1890), 13 Mad. 353; Queen-Empress *v.* Budara Janni, (1890), 14 Mad. 121. *See* Maha Prasad Singh *v.* Ramani Mohan Singh, 27 M. L. J. at p. 471 (P. C.).

(*b*) Ilbert's Government of India, Chapter VIII, p. 463.

and Raichoor, and the Railway lands in Berars; Civil and Military Station of Bangalore; and has been applied to the lands occupied or which may hereafter be occupied by Morvi State Railway, Bombay, Baroda and Central India Railway, &c.

The present Act has been adopted with modifications in some of the Native States, as Mysore, Travancore, and Cochin.

Title, Preamble.—The "title" of an Act is an important part of the Act (*a*); the 'preamble' for the most part repeats the 'title' of an Act. The 'title' of an Act is distinct from the 'short title' of the Act which is generally given in the first section of the Act.

The purpose for which a preamble is framed to a Statute is to indicate what in general terms was the object of the Legislature in passing the Act, but it may well happen that these general terms will not indicate or cover all the mischief which in the enacting portions of the Act itself are found to be provided for (*b*). It is an undoubted rule of construction that where the language of the enacting sections of a Statute is clear, the terms of a preamble cannot be called in aid to restrict their operation or to cut them down (*c*).

"The preamble of a Statute has been said to be a good means to find out its meaning and, as it were, a key to the understanding of it, and as it usually states, or professes to state, the general object and intention of the Legislature in passing the enactment, it may legitimately be consulted for the purpose of solving any ambiguity or of fixing the meaning of words which may have more than one or of keeping the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt" (*d*).

(*a*) Fielding *v.* Morley Corporation, (1858) 1 M. & G. 640, 651; Attorney-General *v.* Margate Pier and Harbour Co., (1900) 1 Ch. 749.

(*b*) Queen-Empress *v.* Indarjit, (1889) 11 All 262 at p 266.

(*c*) *Ibid*; Omrao Begum *v.* The Government of India, (1883) 9 Cal. 704 (P. C.); Gopi Krishna Roy *v.* Ray Krishna Ray, (1910) 12 C. L. J. 8.

(*d*) Maxwell, 4th Edn., pp. 62-3.

Marginal Notes :—The marginal notes appended to the sections of an Act do not form part of the Act and ought not to be looked at in construing the sections (*a*).

Punctuation :—Punctuation can be taken note of in construing statutes of the Indian Legislature, the considerations which induced the Judges in England to lay down a different rule being inapplicable in the construction of statutes in this country (*b*).

Illustrations :—It would be wrong on principle to hold that the words of a section in an Act must be limited to the illustrations given in the Act (*c*). No illustration should be pushed further than its words warrant (*d*). They do not form part of the Acts and are not absolutely binding on the courts (*e*). So they cannot be allowed to control the plain meaning of the section itself and especially where a right conferred by the section is sought to be curtailed (*f*).

Headings :—The heading of a chapter is a key to the construction of the enactment (*g*). But it is a key, only where the main provisions of the sections which occur under that heading or chapter are ambiguously worded (*h*).

Proviso :—A proviso is in the nature of a substantive rule and should not be treated as an exception to the proposition stated

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(*a*) Punardeo *v.* Ram Sarup (1898), 25 Cal. 858; Balraj Kunwar *v.* Jagatpal Singh (1904), 26 All. 393.

(*b*) Secretary of State *v.* Kalikhan (1912), 23 M. L. J. 181; Taylor (Miss) *v.* Charles Bleach (1914), I. L. R. 39 Bom. 182 at pp. 185 and 189-90, distinguishing the Maharani of Burdwan *v.* Krishna Kamini Dasi (1887), I. L. R. 14 Cal. 365, at p. 372 (P.C.) and dissenting from Edward Caston *v.* L. H. Caston (1899), I. L. R. 22 All. 270, at pp. 276-7.

(*c*) Govinda Pillai *v.* Thayammal (1904), 14 M. L. J. 209.

(*d*) Emperor *v.* Janki Das (1908), A. . NW. 95.

(*e*) Nanak Ram *v.* Mohin Lal (1877), I. L. R. 1 All. p. 195; Balmokand *v.* Crown, 11 P. W. R. (Cr.) 1915.

(*f*) Koylash Chunder *v.* Sonatun Chung (1881), I. L. R. 7 Cal. 132, 135; Ram Gopal Sen *v.* Abhoy Cheran Ghosh, 26 I. C. 485.

(*g*) Arrow Shipping Co. *v.* Tyne Improvement Commissioners' (1894), A. C. 508 at p. 530.

(*h*) *In re* Shivlal Padma (1909), 34 Bom. at p. 319.

in a section(*a*). In a recent case it was observed that provisoes are often inserted unnecessarily excepting cases which would not otherwise fall within the enactment for the purpose of removing apprehensions, and cases which are otherwise clearly outside the scope of an enactment cannot be brought within it by any inference founded on the terms of the proviso(*b*). The addition of a proviso to a section by a subsequent enactment was held in *Kameswaramma* v. *Venkatasubba Rao* (*c*) in the circumstances of that case to be no reason for modifying the opinion which the Court would otherwise have arrived at on the construction of the original section.

Court-fees Act:—Duties chargeable under the Court-fees Act are not affected by the provisions of this Act—*vide*, s. 77, *infra*.

2. In this Act, unless there is something repugnant in the subject or context— *Definitions.*

(1) "banker" includes a bank and any person acting as a banker:— "banker."

Cf. Act I of 1879, S. 3 (1).

Includes—means:—The word "includes" occurring in the interpretation clauses has an extending force and does not limit the meaning of the term to the substance of the definition (*d*). It is used in such clauses when it is intended to be enumerative and not exhaustive (*e*). This definition is intended to enlarge the meaning of the term beyond its ordinary meaning and

(*a*) Mullins *v.* Treasury of Surrey (1880), 5 Q. B. D. 173; Zemindar of Chellapalli *v.* Rajalapati Somayya (1914), 27 M. L. J. 718; Maha Prasad Singh *v.* Ramani Mohan Singh (1914), 27 M. L. J. 459 (P. C.).

(*b*) Natesan Chetti *v.* Vengu Nachiar (1909), 33 Mad. 102 at p. 109 citing West Derby Union *v.* Metropolitan Life Assurance Co. (1897), A. C. 647.

(*c*) (1914) 27 M. L. J. 112.

(*d*) In the matter of the petition of Nasibun (1882), I. L. R., 8 Cal. 531.

(*e*) Empress *v.* Ramanujiyya (1878), I.L.R., 2 Mad. 5, at p. 7; Balvant Rav *alias* T. Bapaji *v.* Purushotum Sidheshwar (1872), 9 Bom., H.C.R. 92, at p. 106.

make it include matters which the ordinary meaning would not include. But this enlargement of meaning is confined to the matters expressly mentioned in such definition (*a*). In a recent English case Lord Watson observed: "The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include,' and in that case it may afford an exhaustive explanation of the meaning which for the purposes of the Act, must invariably be attached to these words or expressions "(*b*). When it is intended to exhaust the signification of the word interpreted, the word 'mean' is used (*c*).

"Person" includes "any Company or Association or body of individuals whether incorporated or not" (*d*). A "bank" means an institution, generally incorporated, authorised to receive deposits of money, to lend money and to issue promissory notes—usually known by the name of bank notes,—or to perform some one or more of these functions (*e*). A "banker" is one who receives money in trust to be drawn again as the owner has occasion for it (*f*). Government treasuries in which Local Fund moneys are lodged are banks (*g*). A mere under-

(*a*) Per Lord Esher, M. R. in Rodgers *v.* Harrison (1893), 1 Q. B. 161, at page 167.

(*b*) Dilworth *v.* Commissioner of Stamps (1899), A. C. 99, at pp. 105-6.

(*c*) *See* cases cited in footnote (*e*), p. 18 *supra*.

(*d*). General Clauses Act, X of 1897, s. 3 (39). The Negotiable Instruments Act, XXVI of 1881, s. 3, interprets the word 'banker' to include also persons or a corporation or company acting as bankers.

(*e*) Bouvier, Vol. I.

(*f*) Wharton.

(*g*) Mad. B. P. No. 702, 12th March 1883.

taking by a person to lend money to another for payment of his trade-debts does not constitute the former a banker within the Act (*a*).

Banker and Customer:—As to the relation which subsists between a banker and his customer, Alderson B., observed:—"The customer lends money to the banker, and the banker promises to repay that money and, whilst indebted, to pay the whole or any part of that debt to any person to whom his creditor, the customer, in the ordinary way requires him to pay it." (*b*). Thus the ordinary relation between a banker and customer, in respect of moneys paid by the latter to the former is that of debtor and creditor (*c*), and no fiduciary relationship will be created in the absence of directions by the customer which convert the banker into a trustee in respect of the sums so paid (*d*).

Receipts for moneys deposited in the hands of any banker to be accounted for are exempt. *See* Sch. I, Article 53, Exemption (h).

"bill of exchange."

(2) "bill of exchange" *means a bill of exchange as defined by the Negotiable Instruments Act, 1881, and* includes *also* a hundi, *and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money:*

"bill of exchange payable on demand."

(3) "*bill of exchange payable on demand*" *includes*—

(*a*) Ratulal Rangildas v. Vrijbhukhan Parabhuram (1892), I. L. R. 17 Bom. 684.

(*b*) Roberts *v.* Tucker (1851), 16 Q. B. 560, at p. 575.

(*c*) Official Assignee of Madras *v.* Smith (1908), I. L. R. 32 Mad. 68; Dharam Das *v.* Ganga Devi (1907), 29 All. at pp. 776—8; Ramsay & Co. *v.* The Official Assignee of Madras (1911), I.L.R. 35 Mad. 712, 716; Folley *v.* Hill (1848), 2 H. L. Cas. 28.

(*d*) *Ibid.*

(a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;

(b) an order for the payment of any sum of money weekly, monthly, or at any other stated periods; and

(c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn:

Cf. Act I of 1879, S. 3 (2); 54 & 55 Vic. c. 59, S. 32.

Means and includes:—*See* notes to s. 2, clause (1), pp. 18-9, above.

Bill of Exchange:—There was no definition but only an interpretation of the term "bill of exchange" in the earlier Acts. The definition given in the Negotiable Instruments Act, XXVI of 1881, was referred to in order to determine for the purposes of the Stamp Act whether an instrument was a bill of exchange or not.

In English law, a "bill of exchange" has been defined for the purposes of the Bills of Exchange Act as well as of the Stamp Act. The definitions in sub sections (2) and (3) except clause (c) in sub-section (3) have been taken from the English Stamp Act of 1891 (*a*). Sub-section (2) contains a definition of "bill of exchange" generally for the purposes of the Act, both of a bill payable on demand and of one that is not so, and

(*a*) 54 and 55 Vic, c. 39, s. 32. See Appendix E.

sub-section (3) explains a "bill of exchange payable on demand' (*a*). Under these sub-sections many instruments will be brought which will not come within the definition in the Negotiable Instruments Act. Section 5 of the Negotiable Instruments Act, XXVI of 1881, runs thus:—

A 'bill of exchange' is an instrument in writing containing an unconditional order signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

A promise or order to pay is not 'conditional' within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen although the time of its happening may be uncertain.

The sum payable may be 'certain' within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given, or that payment is to be made, may be a 'certain person' within the meaning of this section and section four, although he is misnamed or designated by description only.

As will be seen from this definition, a bill of exchange must be payable at all events and not be subject to any condition or contingency, but for the purposes of the Stamp Act this need not be the case.

Where the defendants wrote a document to the plaintiff which ran as follows:—"Debit us with Rs. 620 and pay the same to Malik Charan Das Gangaber—Dated Magh 12th. We will pay you the same on Phagan 15th without any excuse—Dated Magh 12th Sambat 1941," it was held that it was not a promissory note payable otherwise than on demand but a bill of exchange payable on demand within the meaning of S. 5 of the Negotiable Instruments Act, notwithstanding the concluding clause of the instrument which contains a promise to repay the plaintiff on a specified date, on the ground that the insertion of

(*a*) Committee of London Clearing Bankers *v.* Commissioners of Inland Revenue [1896], 1 Q. B. 542.

such a clause by way of a postscript and for the information of the drawee did not control the operative part of the instrument as an "unconditional order for the payment of money to a certain person" but merely contained an assurance for the satisfaction and information of the drawee(*a*).

Hundi:—Hundi being the only native instrument included in the term, "bill of exchange" under Act I of 1879, other native instruments, as *Barati chittis* in Bengal and *Samachari chittis* in the North-Western Provinces, escaped duty (*b*). But as these instruments serve the purposes of hundis or letters of credit, they would come within the present definition of bill of exchange. A definition of 'hundi' suggested in the above Government of India Resolution was "an inland bill of exchange drawn in accordance with native practice." As a bill of exchange includes a hundi, all the provisions relating to the former apply to the latter, subject to the special rules relating to hundis made under section 10, sub-section (2). (*c*)

The Negotiable Instruments Act expressly saves from the operation of the Act "any local usage relating to any instrument in an oriental language" unless the instrument indicates a contrary intention. Consequently in the Stamp Act of 1879 the term 'bill of exchange' was interpreted to include a 'hundi.' According to local custom in some parts of India certain documents styled hundis are drawn and the nature of such documents has been considered in some decided cases. For instance, *shahjog hundi* is not equivalent to a hundi payable to bearer. It is not a bill of exchange nor a promissory note payable to order but being attested it is a bond within the meaning of the Stamp Act (*d*). A *jokhmi hundi* which is a hundi in use in the

(*a*) Sheo Das *v.* Kankaya Lal, P. R. No. 61, 1888.

(*b*) I. G. Resolution No. 1757 S. R., dated 25th April 1898. These instruments are letters of advice, but the persons carrying on business by means of these instruments used them for the double purpose of a letter of advice and a letter of credit or hundi. Identical or similar instruments are also used in Ganjam, Krishna, Kurnool and Madura in the Madras Presidency.

(*c*) See Appendix No. II.

(*d*) Tallan Chand *v.* Asaram (1912), 22 C. L. J. 22; Keshari *v.* Asharam, (1915) 22 C. L. J. 209 and the cases cited therein.

trade carried on in Bombay does not materially differ from that of the ordinary *hundi* except in one particular clause which constitutes its characteristic difference, *i.e.*, it is a 'conditional' hundi. It is designed with a double purpose, *viz.*, to put the drawer of the hundi in funds, and at the same time, to effect an insurance upon the goods themselves, by reversing the position of the insurer and insured from that which obtains in ordinary policies, the insurer being the buyer of the hundi who pays the insurance money drawn, and is entitled to recover it with a premium (together making the amount of the hundi) in case the vessel arrives safely (*a*).

'Darshana' or 'Darshani' hundis which are current in Madras, North-Western Provinces and the Punjab are generally governed by usage. If presented for acceptance, as is invariably the case in the Punjab, they must be regarded on the same footing as bills payable otherwise than on demand (*b*); on the other hand, if presented for payment, as is the usage in Madras, they must be treated as bills payable on demand.

Any other document.—The words "any other document, etc." in the latter part of sub-section (2) are obviously intended to cover instruments which may not have all the incidents of bills of exchange. So, an order to a bank for the transfer of a sum of money from one account to another account at the same bank is a bill of exchange, within the meaning of this Act. Thus, where a firm of bankers in London having an account at the Bank of England for the purpose of enabling customers to pay customs duties on goods otherwise than in cash, issued a document addressed to the cashiers of the Bank of England, and directing them to transfer from the account of the bankers to the account of the Commissioners of Customs a sum named therein and this document was dealt with in one of two ways: (1) it was handed by the bankers to their customer in exchange for his cheque for the same amount, and given by him to the Commissioners of Customs, who handed it to the Bank of England, or (2) it was handed direct by the bankers to a customs officer in exchange for their customers' cheque and

(*a*) Jadowji Gopal *v.* Jatha Shamji (1879), I. L.R. 4 Bom. 333, 339—40.

(*b*) See Punjab Stamp Circular No. 5 of 1884; Stamp Manual, p. 134.

subsequently handed by the Commissioners of Customs to the Bank of England, it was held to be a "bill of exchange payable on demand," on the ground that it entitled or purported to entitle the Commissioners to payment of, or to draw upon the Bank for, a sum of money (*a*). All the sub-section says is "any document entitling any person, whether named therein or not to payment by any other person of a sum of money." It would seem therefore that it is not at all necessary, in order to bring a document within the section, that it should be a mandate directed by one man to another to pay a sum of money to a third person (*b*).

Sub-section (3):—Bill of Exchange payable on demand.—In the original Stamp Bill, clause (b) of section 2 (3) was taken word for word from s. 32 of the English Act(*c*), but the Select Committee omitted the concluding words of this clause as it then stood as likely to give rise to difficulty in India, and have also added clause (c) providing expressly that a *letter of credit* is for stamp purposes to be treated as a bill payable on demand (*d*). A bill of exchange in which no time for payment is specified is payable on demand.(*e*).

Order for the payment of money.—An order for the payment of money pre-supposes monies of the drawer in the hands of the party to whom the order is addressed, held on the terms of applying such monies as directed by the order of the party entitled to them. No such obligation arises out of the ordinary contract of sale. If a purchaser buys goods of a manufacturer or a tradesman, he undertakes to pay the price to the seller, not to a third party who is a stranger to the contract, nor will the mere order or direction of the seller to pay to a third party impose any such obligation upon him ; it is only when and

(*a*) Committee of London Clearing Bankers *v.* Commissioners of Inland Revenue, [1896] 1 Q. B. 542, affirming [1896] 1 Q. B. 222. In this case Kay, L.J., was of opinion that the document was one entitling the Commissioners of Customs to payment rather than entitling them to draw, because drawing was an incidental thing which followed not immediately upon the document but upon the transfer obtained under the document (p. 552).

(*b*) Rothschild & Sons *v.* Commrs. of In. Rev., [1894] 2 Q. B. 142, at p. 148.

(*c*) *See* Appendix B. (*d*) *See* Appendix E.

(*e*) S. 19 of the Negotiable Instruments Act, XXVI of 1881.

because the right of the seller to the price has been transferred to the third party by an effectual assignment that the assignee becomes entitled as of right to the payment (*a*). Hence, an order from a creditor to his debtor under an ordinary contract for the price of goods, or for work and labour, or the like, to pay to a third party can confer on the latter a right only so far as it operates as an assignment of the debt and is not an order for the payment of money (*b*), and would therefore be liable to duty only as an assignment of a debt. In this case the facts were as follows:—T. had entered into a contract with J. to build for him a steam-launch for the sum of 80*l.* the price to be paid when the boat should be completed and delivered. But, though by the contract no part of the price was payable in advance, J. during the progress of the work advanced to T. 40*l.* on account. In this state of things, T. being indebted to Robson and Son who were timber merchants, for timber supplied to him, agreed to make over to them the further 40*l.* which would become due to him on completion of the contract; in furtherance of which he addressed a letter to J. in these terms:—"Dear sir, I hereby assign to Messrs. Robson and Son, Boat Builders, Sunderland, the sum of 40*l.*, or any other sum now due or that may hereafter become due in respect of the steam-launch which I am building for you. I will thank you to hold the same at their disposal, and their receipt for the amount will be a full and sufficient discharge." It was held that the letter was not an order for the payment of money but an assignment of debt and might be given in evidence on payment of the proper duty and penalty (*c*). This case was followed in *Fisher* v. *Calvert* (*d*),

(*a*) Buck *v.* Robson (1878), 3 Q. B. D., 686, at p. 691.

(*b*) *Ibid.* at p. 692.

(*c*) The Court in support of its decision relied on the decision of the Court of Appeal in *Brice* v. *Bannister* (1878), 3 Q. B. D. 569, disapproving of the decision to the contrary in Ex parte *Shellard*, L. R. 17 Eq. 109. *Bacon, C. J.*, was of opinion in *In re* Whitting: Ex parte Rowell (1878), 48 L. J., N. S. Bank. 46, that the case of Ex parte *Shellard* was rightly decided and was distinguishable from that of *Buck* v. *Robson*. In *Brice* v. *Bannister*, the question between these two classes of instruments, more especially with reference to the question of stamp duty, did not directly arise.

(*d*) (1879), 27 W.R. 301. *See Ex parte* Hall: *In re* Whitting (1879), 10 Ch. D. 615, where the view of Bacon, C. J., was not accepted.

where it was held that an order by a debtor to the trustees of his father's will to pay his creditor "out of the monies now due or hereafter to become due to me under the will of my late father" was held to be not an order for the payment of money but an assignment of part of legacy. In this case, Jessel, M.R., on the construction of the corresponding section (48) of the Stamp Act of 1870, said he would rather not say what the exact meaning of S. 48 of the Act was but he thought that it could never have been intended to include every document coming literally within the meaning of the words used, and observed:—

"If that were so, almost every kind of written document would be included as a bill of exchange, and great injustice and confusion would arise, as they could not be stamped subsequently and would be altogether void. Reading the definition of a 'bill of exchange' given in the Act, any covenant, such as a covenant, to pay rent, which was a document entitling a person to payment by some other person, was certainly within the first sub-section. Was that to be read so as to make every lease a "bill of exchange"? Then looking at sub-section 2, it would be difficult to argue that a will did not come under the words used there. It was quite plain, therefore, that the draftsman must have intended that the words used in both sub-sections should be read with some limitations."

In his Lordship's opinion the nature of the instrument must be looked at in each case, and its precise nature ascertained. It was not necessary for him to state in the case before him what the limits of the section should be, for it was governed by the direct authority of the Queen's Bench Division in *Buck* v. *Robson*. The corresponding section 48 of the English Stamp Act, 1870, was subsequently considered by the Court of Appeal in Ireland in *Adams* v. *Morgan* (*a*), and Law, C. observed :—

"The language of the 48h section and especially of its first paragraph must, I apprehend, receive such limited construction as will exclude from its operation at least all documents for which other and distinct rates of duty are specially required by the Act.

"But it seems to me that the second paragraph, like that which follows it was not meant to enlarge in any way the provisions of the first which are, in fact, in themselves only too comprehensive, but to determine the amount of tax payable on the different kinds of orders for payment considered as liable to bill of exchange duty. Its object was, I think, to provide, as it does, that orders for payment

(*a*) (1883), 14 L. R. Ir. 140.

out of funds which might never be forthcoming or available, or in contingencies which might never happen, should be deemed orders for payment on demand and therefore chargeable with a fixed duty of 1*d.* only. At the same time it must be conceded that the language employed for this purpose does also incidently declare that the particular orders there described shall be deemed bills of exchange for the purposes of the Act, and therefore on the principle that *generalibus specialis derogant*, it may perhaps be that the particular classes of orders for payment so specified are chargeable with the fixed 1*d.* bill of exchange stamp duty, though they be meant to operate and do eventually operate as assignments. * * *

"The deliberate use of these words [*which may or may not be available*] shows that not all orders for payment out of a particular fund but only those 'out of a fund which might or might not be available' or, as Sir James Wigram translates it, out of a *precarious* fund, are meant to be thus dealt with. Accordingly it will be found that in all the cases arising on the same words in the Act of 1815, and in which the orders for payment out of particular funds were held to require bills of exchange stamps, the funds so designated as the sources of payment were such as might possibly never be available for the purpose. Such were *Emly* v. *Collins* (*a*); *Firbank* v. *Bell* (*b*); *Butts* v. *Swann* (*c*), and *Parsons* v. *Middleton* (*d*), * *

"The point, as it appears to me, is not only tolerably clear on the reason of the interpretation of the Stamp Act itself, but is concluded by authority. *Diplock* v. *Hammond* (*e*) decided by the English Lords Justices of Appeal in 1854 on the similar provision of the Act of 1815 as well as *Brice* v. *Bannister* (*f*) decided on the Act of 1870 not only by Lord Coleridge and Mr. Justice Lindley but also by the Court of Appeal; and *Buck* v. *Robson* (*g*) in the Queen's Bench Division—all show that whatever amounts to an assignment of a debt or part of a debt is to be stamped as such and not as a bill of exchange; whilst the decision of Sir George Jessel in *Fisher* v. *Calvert* (*h*) is, if possible, a still more direct authority to the same effect (*j*)."

Where the defendant authorised the plaintiff, his creditor, by letter to receive from a third party a sum of money due to him for the price of fodder sold, it was held that the letter operated as an assignment of the debt and was charge-

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(*a*) (1817), 6 M. & S. 144.
(*b*) (1817), 1 B. & Ald. 36.
(*c*) (1820), 2 Br. & B. 78.
(*d*) (1847), 6 Hare 261.
(*e*) (1854), 5 D. M. & G. 320.
(*f*) (1878), 3 Q. B. D. 569.
(*g*) (1878), 3 Q. B D 686.
(*h*) (1879), 27 W. R. 301.
(*j*) 14 L. R. Ir., at pp. 146-7.

able as a conveyance (*a*). Again, an order by a master to his servant for the payment of money belonging to the former in the hands of the latter was held to be not an order for the payment of money, as an order for the payment of money "seems to be in the nature of a mercantile instrument similar to a draft or cheque" (*b*).

The order must be for a specific amount. Thus, in *Firbank* v. *Bell* (*c*), where C was directed by a letter from B to pay out of the sale-proceeds of his goods in his (C's) hands a certain sum of money to D, it was held that the order must be stamped as an order for the payment of money out of a fund which might or might not be available. But, where a consignor of goods sent to the consignee the following order, "Please to pay to N on account of G. & Co. the proceeds of a shipment of twelve bales of goods, value about 2,000*l.* consigned by me to you," and the consignee in a letter by way of answer agreed to do so, it was held that neither of these letters required a bill stamp as an order for the payment of specific money (*d*).

Promissory Note.—It is immaterial to consider for the purposes of this Act whether a certain instrument is a bill of exchange or promissory note, as both are liable to the same duty (*e*).

Effect of alteration of a bill or note.

Where a bill or note has been altered, the question arises whether the alteration is so material as to make it a new instrument requiring fresh stamp. The following rules may be noted as bearing upon the subject. *First*, a bill or note may be altered at any time before issue without fresh stamp; and 'issue' means, the first delivery of a bill to a person who takes it as a holder for value,

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(*a*) Nandubai *v.* Gau (1902), I.L.R. 27 Bom. 150; *cf.* Jadowji Gopal *v.* Jatta Shawji (1879), I.L.R. 4 Bom. 333.

(*b*) Sree Putbalvant Rao *v.* Futteh-ooddeen (1869), 1 N.W.P., H.C.R., 143.

(*c*) (1817), 1 B. & Ald. 36.

(*d*) Jones *v.* Simpson (1823), 2 B. & C., 318; *cf.* Hutchinson *v* Heyworth (1838), 9 A. & E. 375.

(*e*) *See* Arts. 13 and 49 of Sched. I.

so as to be able to enforce payment thereof (*a*). But a mere accommodation bill is not considered as issued until negotiated; and until such issue it may be altered by the parties without a new stamp (*b*). *Secondly*, where the alteration of the instrument is made in pursuance of the original intention of the parties at the time of issue, as, for instance, to correct a mistake, it does not require a fresh stamp. Thus the correction of a bill after endorsement, by supplying the words "or order" omitted by mistake (*c*), or the alteration of the date of a bill by consent of all parties, in correction of a mistake, to the date originally intended does not make it a new bill or require a new stamp (*d*). Nor does the alteration of the sum stated in the body of the bill in correction of a mistake and to accord with a less sum stated in the acceptance require a new stamp (*e*). So, before it is negotiated, an instrument altered from a note to a bill according to the terms of the original agreement is valid (*f*). On the other hand, where the alteration is not in accordance with the intention of parties at the time of issue, but is made on the suggestion subsequently made by one of the parties, a fresh stamp is necessary. Thus, a promissory note altered by inserting the specific consideration given in substitution for the general expression "value received" was held to require a new stamp(*g*). The addition by the acceptor of a bill of a place of payment at the request of the payee is not such an alteration as requires a new stamp, because it does not qualify the general acceptance (*h*). Subject to these qualifications, a material alteration after issue renders the bill a new instrument requiring a fresh stamp (*i*).

(*a*) Downes *v.* Richardson (1822), 5 B. & Ald 674; Scholfield *v.* Earl of Londesborough, [1894] 2 Q. B. 660, 666.

(*b*) *Ibid.*; Tarlaton *v.* Shingler (1849), 7 C. B. 812.

(*c*) Byrom *v.* Thompson (1839), 11 A & E. 31.

(*d*) Jacob *v.* Hart (1817), 6 M. & S. 142

(*e*) Hamelin *v.* Bruck, [1846] 9 Q. B. 306.

(*f*) Webber *v.* Maddocks (1811), 3 Camp. 1

(*g*) Knill *v.* Williams (1809), 10 East, 431.

(*h*) Walter *v.* Cubley (1833), 2 Cr. & M. 151.

(*i*) *See* Chalmers' Bills of Exchange, p. 214.

Post-dated bills.—A bill payable on demand is not insufficiently stamped by reason only that it appears to be antedated or post-dated from the evidence in the case. Where in the course of the evidence in a case, it appeared that there was a practice in a district for borrowers of money to give hundis payable on demand which were never presented for payment but of which the drawer himself repaid the amount, it was held that such a hundi should be looked at as it stood and that evidence should not have been admitted to construe it to be a bill of exchange payable otherwise than on demand or any other instrument (*a*). The same principles apply to promissory notes and cheques—*see* further, notes under "cheque," sub-section 7, *infra*.

Penalty for post-dating bills and promissory notes :— Section 68 provides a penalty for post-dating a bill or promissory note. Whether a bill or note is post-dated or not can be ascertained only by taking evidence. Though such oral evidence is not admissible to render the document invalid in a suit on the bill or note, it is admissible to sustain a prosecution under s. 68 of the Act.

Letter of credit.—Under Art. 41, Sch. I of the Stamp Act of 1879, a letter of credit was defined and liable to a fixed duty of one anna (*b*). As the present Act treats a letter of credit as a bill payable on demand, there is no necessity to mention it in a separate Article in the Schedule to this Act and prescribe the duty of one anna.

See notes under Art. 13, "Bill of Exchange," Sched. I, *infra*

"bill of lading."

(4) "bill of lading" *includes "a through bill of lading" but does not include a mate's receipt:*

Cf. Act I of 1879, s. 3 (3); 54 & 55 Vict. ch. 39, s. 40, *infra*.

Includes :—*See* notes at pp. 18-9, above,

(*a*) Sakharam *v.* Ramchandra (1902), I.L.R. 27 Bom. 279.

(*b*) *See* Appendix A.

In lieu of the definition of this term in section 3 (3) of Act I of 1879, the draft Bill substituted merely the words "bill of lading includes a through bill of lading" and the Select Committee added the words "but does not include a mate's receipt." No reason is stated for omitting the definition altogether. The use of the word "includes" would show that the alteration was intended to give a wider meaning to the term. "Bill of lading" was defined in Act I of 1879 to be "any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of the goods therein described and undertaking to deliver the same at a place and to a person therein mentioned or indicated." This definition was said by the Select Committee on the Bill of 1878 to have been so drawn as to exclude receipts for goods received by cargo boats for shipment within the limits of a port. Such receipts were specially exempted by Act I of 1879 and have also been exempted by this Act (*a*). A bill of lading is usually made in three or more original parts, one or more of which are sent to the consignee, one is retained by the master or captain, one by the merchant or the shipper (*b*). A parcel ticket or receipt granted by a Steam Navigation Company on the production of which a consignee receives a parcel from the custom house, is in the nature of a bill of lading (*c*).

A document which purported to be a receipt for goods shipped from one place for delivery at another, though relating to the carriage of goods by inland navigation only and not by a sea-going vessel, was held to be a bill of lading within the Act, and though such a document contained an undertaking by the carrying company that in consideration of an additional freight the company should bear all the risks of carriage, it was held that the document was not 'a policy of sea-insurance,' but only 'a contract for sea-insurance' and was not, therefore, liable to be stamped as a 'policy of sea-insurance' under Art. 47 A of Schedule I (*d*).

(*a*) *See* Exemption (*a*), Art. 14, Sched. I.

(*b*) Bouvier, Vol. I, p. 241; Wharton

(*c*) Mad. B. P. No. 425, 25th June 1889.

(*d*) Reference (1903), I. L. R. 30 Cal. 565.

A "through bill of lading" is one where a railway company contracts to transport over its own line for a certain distance car-loads of merchandise or stock, there to deliver the same to its connecting lines to be transported to the place of destination at a fixed rate per car-load for the whole distance(*a*). This definition would also apply to trans-shipment of goods by vessels. A "mate" is the officer next in rank to the master on board a merchant ship or vessel.

Bill of lading distinguished from charter-party.

Where an entire vessel is engaged for hire for the purpose of exporting or importing goods, a charter-party is executed; but where instead of taking an entire vessel, the owner of goods merely bargains for their conveyance for freight by any particular vessel, (other goods being at the same time conveyed in her for other proprietors), a bill of lading is usually executed (*b*). A charter-party is further distinguished from a bill of lading, inasmuch as the charter-party states the terms and conditions of the freight or carriage, whereas the bill of lading ascertains only the contents of the cargo, that is, the quantity, condition and marks of the merchandise, the names of the parties and the places of departure and destination (*c*).

See notes under Art. 14, "Bill of Lading," Sched. 1, *infra*.

"bond."

(5) "bond" *includes*—

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(*a*) Bouvier, p. 241. (*b*) Steph. Comm., Vol. II, p. 149. (*c*) Tomlin.

(*c*) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

Cf. Act I of 1879, S. 3 (4).

Old Law :—There was no definition of the term "bond" in the Stamp Acts of 1860 and 1862. Under the Act of 1860, all bonds or other obligations for the payment of any definite or certain sum of money not otherwise charged for or expressly exempted from the payment of duty were chargeable. Under the Act of 1862, the obligation for the payment of money might be either *absolute* or *conditional*. So, an instrument which recited that A sold a shop to B for Rs. 620 and received Rs. 25 as earnest money, that on receiving the balance of the purchase money he would execute a deed of sale and that if he should retract, he was to pay Rs. 50 to B, was held to be a *conditional* bond within the meaning of Article 12, Schedule A of the Stamp Act I of 1862 (*a*). Now, an instrument containing a covenant to do a particular act the breach of which is to be compensated in damages, is not a bond but only an agreement (*b*). Under Art. 4, Sch. A of Act X of 1862, an agreement to cultivate, manufacture, produce, provide or deliver any article in consideration of advance made required to be stamped upon the amount advanced. Where such an agreement provided for payment of a certain sum for breach, it was held that the duty depended upon the amount of the consideration for the undertaking and not upon the value of the thing concerning which the contract was made (*c*); similarly, an agreement to supply cotton in consideration of a sum of money received required to be stamped under Art. 4 and not under Art. 15, Sch. A, of the same Act (*d*).

Where a party retained a pleader to apply for a succession certificate and agreed in writing to pay him a certain sum for

(*a*) Civil Reference No. 4 P. R. 1866.

(*b*) *See* the cases noted in footnote (*b*) at p. 37, *infra*.

(*c*) J. W. Smith *v.* Gopal Sheikh (1865), 3 W. R. S.C. 14; John Doyle *v.* Mundaree Mundul (1866), 5 W. R. S.C. 10.

(*d*) Samsuddin Sultan *v.* Ramji Bhika (1868), 5 Bom. H C. R., A.C.J. 151.

his services though the parties should come to a compromise, it was held that the instrument was not a bond or other obligation for the payment of money within the meaning of Art. 12, Sch. A of Act I of 1862, but an agreement for service under Article 7 (*a*). But an agreement to pay a pleader a certain sum in the event of the case terminating successfully was held to be a bond within s. 3 (5) of the Stamp Act of 1869 (*b*). Though the document in this case was attested by witnesses, it may be doubted whether it would fall under s. 3 (5) of that Act, for under the definition of "bond" in the Act of 1869 which corresponds to clause (a) of sub-section 5 of s. 2 of the present Stamp Act, the performance or the non-performance of the act was incumbent on the obligor and not on the obligee [pleader].

A promissory note attested by a witness did not require to be stamped as a bond under Act X of 1862, Sch. A, Art. 10. The words in that clause "not being a bond, instrument, or writing bearing the attestation of one or more witnesses" refer only to the preceding words "other order or obligation for the payment of money," and the words "bearing attestation of one or more witnesses" apply only to the words "instrument or writing," and not to the word "bond"(*c*). Following this case it was held that a document attested and dated October 1862, and which ran as follows:—"The sum of one lakh and eighty thousand coined rupees, a moiety whereof is Rs. 90,000 appertaining to the personal account of H., a merchant, is payable by me and is to be paid on demand," was a promissory note within Art. 10, Sch. A, Act X of 1862, and that the fact that it was attested did not alter its character (*d*).

Clause (a) is identical with the definition of 'bond' given in Act XVIII of 1869; clauses (b) and (c) were added in Act I of 1879 to make the term 'bond' include instruments having the conditions of the native 'Khatta' or 'Tamassuk' on the ground that these instruments differed from the ordinary promissory note in this respect that they were invariably, according to

(*a*) Dalput Rai *v.* Ruheem Buksh, No. 86, P. R, 1869.

(*b*) Spencer *v.* Emamoodeen, No. 82, P. R., 1870.

(*c*) Gladstone *v.* Sadoo Chun Dutt, 2 Ind. Jur N.S., 203.

(*d*) R. D. Sethna *v.* Mirza Mahomed Shirazi (1907), 9 Bom. L.R. 1084.

existing practice, attested by witnesses and that such attestation obviously gave them an increased value as evidence (*a*).

Bond:—In English Law, a bond is an instrument under seal whereby the person bound obliges himself to pay a certain sum of money to another at a day specified. If this be all, then the bond is called a *single* one. But there is generally a *condition* added that if the obligor does, or abstains from doing, some particular act, the obligation shall be void, or else shall remain in full force; and the sum mentioned in the obligatory part of the bond is in the nature of a *penal sum* (or *penalty*). The condition is used to secure as far as possible the payment of money or the performance of or abstention from some act (*b*). Clause (a) relates to a bond with a condition and clauses (b) and (c) deal with single bonds.

The important word in the definition of 'bond' is the word 'obliges' and therefore no document can be a bond within this sub-section unless it is one which by itself creates the obligation to pay the money (*c*). An obligation to lend money does not create an obligation to pay money within the meaning of this sub-section (*d*). The obligation must be express and not one which can be implied by law (*e*). An instrument which is in the nature of a bond is not the less a bond, because it does not come into operation unless and until the hundi with respect to which it is passed has been dishonoured (*f*).

Clause (a).—The words "on condition that the obligation shall be void, if a specified act is performed or is not performed

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(*a*) Preliminary report of the Select Committee, para 7 (I.G., 7th Sept. 1878); Proceedings of the Legislative Council dated 5th Sept. 1878 (I. G., 14th Sept. 1878.

(*b*) Steph. Comm., Vol. II., pp. 117 and 118.

(*c*) Hira Lal Sircar *v.* Queen-Empress (1895), I. L. R. 22 Cal. 757; cf. R. D. Sethna *v.* Mirza Mahomed Shirazi (1907), 9 Bom. L. R. 1034, at pp. 1039, 1041.

(*d*) Hitwardhak Cotton Mills Co. *v* Sorabji (1909), I. L. R. 33 Bom. 427.

(*e*) Sakal Chund Jadhowji *v* Ghulab Chund Mothi Chund (1882), Bom P. J., p. 29; Ranchordas *v.* Bhimbai, Bom. P.J 1888, p. 128. Cf. Hira Lal Sircar *v.* Queen Empress, *supra*. *See* cases cited under the heading "Bond distinguished from acknowledgment, p 39, *infra*.

(*f*) Lakshmandas *v.* Rambhau (1895), I. L. R. 20 Bom, 791.

as the case may be," refer to the obligor, *i.e.*, the person bound, and it is the obligor and not the obligee on whom the performance or non-performance of the specified act is incumbent (*a*).

Bond with condition or Covenant with penalty:—An instrument containing a covenant to do a particular act, the breach of which is to be compensated in damages is not a bond, but only an agreement (*b*). In the case of a bond with a condition the person bound agrees primarily to pay money in all cases except where he does or abstains from doing a particular act: but in the case of a covenant with penalty, the obligor promises primarily to perform the agreement, but in case of non-performance, to compensate the promisee in damages. On this point Garth, C. J., observed :—

" The definition of a bond in s. 3 (5) of the Act (corresponding to s. 2 (5), clause (a), of the present Act) is precisely what we understand by a bond in England, and it is an obligation of a different character from a covenant to do a particular act, the breach of which must be compensated in damages. Whether a penal clause is attached to such a covenant or not, the remedy for the breach of it is in form and substance an action for damages ; and by section 74 of the Indian Contract Act, the English rule with regard to liquidated damages is abolished, and the plaintiff in such a suit has no right under any circumstances to claim the penalty itself as such. He can only recover such compensation not exceeding the amount of the penalty, as the judge at the trial considers reasonable ; but he is entitled to that compensation whether he proves any actual damages or not. The remedy upon a bond is very different. The plaintiff, in the case of a simple money bond, recovers the sum named in the bond, or in the case of a bond conditioned for the performance of a covenant, he recovers the actual damage which he can prove that he has sustained. In either case not only is a bond a contract of a different form and nature from a covenant with a penal clause, but the remedy upon it, and the amount recoverable for the breach of it is also different " (*c*).

(*a*) Per Oldfield, J., Ref. (1880), I. L. R. 2 All. 654, at p. 663.

(*b*) Robert and Charriol *v.* Shircore (1871), 7 I. L. R., O.C., 510; Gisborne & Co. *v.* Subal Bowri (1881), I. L. R. 8 Cal. 284; S. C., 10 C. L. R. 219; cf. in the matter of Gajraj Singh (1884), I. L. R. 9 All. 585, 589; Madras Ry. Co. *v.* Rust (1890), I. L. R. 14 Mad. 18; Punjab Stamp Manual, pp. 137-8 ; *contra*, Ref. (1880), I. L. R. 2 All. 654.

(*c*) Gisborne and Co. *v.* Subal Bowri (1881), I. L. R. 8 Cal. 284, at p. 286. Section 74 has been amended by Act No. VI of 1899, and the rule stated here has been made applicable also to stipulations by way of penalty.

Clause (b).—An instrument will come under this clause if it be (1) attested, and (2) not payable to order or bearer and (3) contain an obligation for the payment of money. An instrument signed by the writer as the writer of it *for the purpose* of attesting the signature of the executant is a bond (*a*); but where the writer of the instrument signs it *merely* to show that he is the writer of it and not to attest the executant's signature, the instrument would not become a bond (*b*). Where an instrument which contained a promise by the executant R. to pay a certain person a sum of money and which was not made payable to order or bearer bore his mark and the words "signature of R., handwriting of B.", it was held that if B. was present when R. made his mark, the words implied a form of attestation and the instrument was a bond and if B. was not present, it was a promissory note payable on demand (*c*). A document was held not attested by a witness within the meaning of this clause, merely by reason of its bearing on the face of it a statement by the scribe of the document that it was correct and was written by his pen (*d*). A man cannot attest his own signature, and therefore the signature of an executant of an instrument as the writer thereof does not amount to the attestation of a witness (*e*).

An instrument by which the executant stipulates to pay another a certain sum annually is a bond (*f*). An instrument reciting that the executant received a certain sum of money as a loan, on condition of his sons being employed under the obligee, that they were mortgaged for the loan and that they should be

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(*a*) Ref. (1887), I. L. R. 10 Mad. 158; Mad. B. P., 2nd Sept. 1887, No. 514; Ref. (1889), 13 Mad. 147.

(*b*) Dulabh Vanmali *v.* Rehman Jamal (1890), I. L. R. 14 Bom. 511; Mad. B. P., 2nd Sept. 1887, No 514; Mad. B. P., 16th Dec. 1886, No 2712.

(*c*) Nahanchand Revchand *v.* Ravji Bapu (1887), Bom. P. J. 1887, p 302

(*d*) Ref. (1892), I. L. R. 17 All 211; Gurditta Mal *v* Dhanna Singh, 14 P. R., 1902; cf. Ref. (1887), 1 L. R. 10 Mad. 158

(*e*) Mad. B. P. No. 290, 21st March 1888.

(*f*) Mad. B. P. No. 186, 4th Feb. 1881; Bailukhi *v* Amaidas, Bom. P.J., 1887, p. 248.

relieved whenever the loan should be repaid, was held to be a bond and not a mortgage deed (*a*). Abkari renters' agreements in the Madras Presidency, being unattested, are not bonds but agreements (*b*)

Bonds and promissory notes are in the nature of agreements. A bond with a condition—clause (a)—is clearly distinguishable from a promissory note which contains an unconditional undertaking. Bonds under clause (b) are required to be attested and must not be payable to order or bearer (*c*); but if an instrument purports to be a promissory note payable to order or bearer, it does not become a bond, because it is attested (*d*). Where a promissory note is not payable to order or bearer and is not attested, it is not a bond; but, if attested, was held under the repealed Act I of 1879 to be a bond (*e*). But now, the term 'promissory note' being defined in section 2 (22) of this Act to be a promissory note as defined by the Negotiable Instruments Act, a promissory note not payable to order or bearer, though attested by a witness, would come within that definition and, if so, would require to be stamped as a promissory note. But, clause (b) of this sub-section makes such an instrument also a bond. With reference to a document executed after this Act came into force and attested by witnesses and which was in the following

Bond distinguished from promissory note.

(*a*) Mad. B. P. No. 2773, 22nd Dec 1886.

(*b*) Ref. case No. 1 of 1880 (unreported); S. C. Mad. B. P. No. 722, 27th May 1880.

(*c*) Muttu Chetti *v.* Muttan Chetti (1879), I.L.R., 4 Mad. 296; Ref. (1884), I.L.R., 8 Mad. 87, at p. 89; S.C. Mad. B. P. No. 4389, 18th Dec. 1884.

(*d*) Ref. (1884), I.L.R., 8 Mad. 87; S. C. Mad. B. P. No. 4389, 18th Dec. 1884; Mad. B. P. No. 1867, 26th June 1883. Under the Stamp Act X of 1862, a promissory note though attested by a witness did not require to be stamped as a bond; *Gladstone* v. *Sadoo Churn Dutt* (1876), 2 Ind. Jur. N.S. 203; R.D. Sethna *v.* Mirza Mahomed Shiraji (1907), 9 Bom. L.R. 1034, 1039.

(*e*) Ref. (1884), I.L.R. 8 Mad. 87; Ref. (1887), I. L. R. 10 Mad. 158, at p. 159; Ref. (1889), I. L. R. 13 Mad. 147; Mad. B. P. No. 1867, 26th June 1883; R. D. Sethna *v.* Mirza Mahomed Shirazi (1907), 9 Bom. L. R. 1034, at pp. 1039, 1041.

terms : " I have this day taken from you in cash Rs. 48. I have received this amount. I shall repay this money without taking any objection when you should demand it," it was held to be a bond within s. 2 (5) (b) of this Act (*a*). No distinction is drawn in the above decision between the definitions of " bond " and " promissory-note " in the present Act. It would seem that the document in question may be treated as a bond and also as a promissory-note. In a recent case Beaman, J., was of opinion that such a document would become a bond or at any rate something else than a promissory note (*b*). The question whether such a document falls within the category of a 'bond' or 'promissory note' would seem to be of little importance, for s. 6 of the Act provides that an instrument falling within two or more of the descriptions in the Schedule to the Act is chargeable with the highest of such duties. So a document of the above description will have to be stamped as a bond, the duty on the same being higher than that on a promissory note. A bond under clause (c) obliges the obligor to deliver grain or the like ; but a promissory note must contain an undertaking to pay money only.

Bond distinguished from acknowledgment.

An instrument containing merely an acknowledgment of debt does not possess the binding character of an obligation. In order that it may amount to a bond, it must be followed by a promise to pay and be attested in addition. Where an instrument bearing date the 24th September 1881, stamped with an adhesive stamp of one anna and attested, recited that an account was made up of the principal and interest due on a former bond executed by the defendant to the plaintiff, and that a certain sum was found due at the date of the instrument, the defendant promising to pay interest at a certain rate on the sum thus found due and pay the principal on demand, it was held that the instrument was a bond (*c*). Documents which were in form acknowledgments

(*a*) Venku *v.* Sitaram (1904), I. L. R. 29 Bom. 82.

(*b*) R.D. Sethna *v.* Mirza Mahomed Shirazi (1907), 9 Bom L.R. 1034, at p. 1039.

(*c*) Balkrishna Trimbak *v.* Govind Pand Naik (1884), I. L. R. 8 Bom. 297.

only were held under Act I of 1879 not converted into bonds as defined in clause (b) by the mere fact that they contained memoranda as to the rate of interest at which the loan was made and were attested by witnesses (*a*). But if the memoranda as to rate of interest amounted to stipulations to pay interest, then the documents would cease to be acknowledgments under this Act (See Art. 1, Schedule I,) In the case of a bond, the document by itself creates the obligation, which is not the case with an acknowledgment of advance or of purchase and receipt of goods, the obligation to pay for which is not created by the instrument but arises from the promise to repay the advance or to pay for goods which the law implies, when money is borrowed or goods are purchased (*b*). An entry in an account-book, which purported to attest that the accounts of a certain person had been balanced by a third party who had declared that the result of the making up of the accounts was to show that a certain sum was due by that person, who in the presence of a witness signed in acknowledgment of the correctness of the accounts, was held not to be a bond, on the ground that "the law may *infer* from this a promise to pay, but there is nothing in such an entry to show that it was the intention to create a fresh obligation,"(*c*). An acknowledgment of a debt signed by the executants and attested by a witness, by which the plaintiff was to receive the balance from the executants was held to be a bond, on the ground that when the executants signed the instrument *by which the plaintiff was to take the balance* from them, they must be held to have undertaken to pay the balance and to have therefore obliged themselves thereby to pay the money (*d*).

Clause (c).—An attested instrument in which the obligor stated that he borrowed a certain quantity of grain from the obligee and agreed to repay it at a future time in greater quantity was held to be a bond within the meaning of clause (b), although the instrument was silent as to the money value of the grain(*e*).

(*a*) Hira Lal Sircar *v.* Queen-Empress, (1895), I. L. R , 22 Cal. 757.
(*b*) Hira Lal Sarcar *v.* Queen-Empress, I.L.R., 22 Cal. 757, at p 759
(*c*) Chamba Ram *v.* The Crown, 4 P. R , 1885 (Rev.).
(*d*) Daula *v.* Gonda, 35 P. R., 1903.
(*e*) Magandas Khemchand *v.* Ramchandra Hiraji, (1883), 1. L. R, 7 Bom. 187 ; Lachiram Jayasingji *v.* Ramji Bin Shivaji (1869), 6 Bom. H. C. R., A. C. J., 107.

The document in this case would seem to come more properly under clause (c), as the agreement was to deliver grain. Where in consideration of the receipt of Rs. 16-4-0, the executant bound himself in writing to deliver a specified quantity of grain, the document being attested was held to fall within clause (c)(*a*). This case was followed in a recent case,(*b*) in which it was held that an ordinary agreement for sale of cotton between two merchants, when attested by a witness, becomes a bond and is not an agreement for or relating to the sale of goods or merchandise exclusively within the meaning of Exemption (a) to Article 5, Sch. I of the Act. Again, an instrument attested by a witness whereby the executant agreed to deliver a certain quantity of wheat and linseed was held to be a bond and not exempt under Art. 5, Sch. I, on the ground of attestation (*c*). Where a lease for one year attested by a witness provided for payment of a certain quantity of grain as rent and contained an agreement to pay a certain quantity of grain on account of the balance for the previous year, it was held that this agreement in the lease should be stamped as a bond (*d*). Where an attested document recited the borrowing of a sum of money and in consideration therefor the executant agreed to return it partly in cash and partly in kind, it was held to be a bond (*e*). An agreement to deliver grain for price, if unattested, falls under Exemption (a), Art. 5 (b), Schedule I.

Rab, that is, unrefined sugar, is agricultural produce (*f*). Cotton is agricultural produce (*g*), but timber is not (*h*) nor tamarind seed (*j*) A satta attested by a witness and executed

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(*a*) Rupchand Chittarshet *v.* Barku Valad Suka, Bom. P.J., 1884, p.257

(*b*) *In re* Ralli Bros (1906), 8 Bom. L. R. 234.

(*c*) C. P. Cir. No. 9 of 1887 ; *see* Stamp Mannal, C. P., p. 8.

(*d*) Ramchandra *v.* Dhondoo (1905), 7 Bom. L. R. 929.

(*e*) Sakharam *v.* Keshav; Kashinath *v.* Vithu (1882), Bom. P J., 1882, p. 408.

(*f*) In the matter of Gajraj Singh (1884), I. L. R. 9 All. 585.

(*g*) Mad B. P. No. 25, 12th January 1888 ; cf. Mad. B. P. No. 184, 14th Feb 1888.

(*h*) Cf. Ref. (1884), I. L. R. 8 Mad. 15, at p 17.

(*j*) C P. Cir No. 7 of 1887 ; *vide* Stamp Manual, C. P., p. 7.

for the delivery of cotton on a certain day is a bond; indigo sattas, if attested, would be bonds; if unattested, would be covenants with a penalty attached (*a*).

A petition stamped as an agreement and signed by the parties to a suit and attested by witnesses was presented to a Court, the parties stating in it that they had entered into an agreement, whereby *inter alia* the defendant was bound to deliver to the plaintiff certain tons of casuarina wood and requesting that the suit might be removed from the file. The Lower Court treated it as a bond under clause (c) and levied duty and penalty. The High Court held that the document was not a bond, but a petition to the Court chargeable with a stamp under Article 1 (*b*), Schedule II of the Court Fees Act and were of opinion that the sum improperly levied should be returned (*b*).

See notes under Art. 15, "Bond," and Art. 57, "Security-bond or Mortgage-deed," Schedule I, *infra*.

"chargeable."

(6) "chargeable" means, as applied to an instrument executed or first executed after *the commencement* of this Act, chargeable under this Act, and, as applied to any other instrument chargeable under the law in force in British India when such instrument was executed, or, where several persons executed the instrument at different times, first executed:

Cf. Act I of 1879, S. 3 (5).

S. 3 lays down what instruments are chargeable under this Act. The duty chargeable on an insufficiently stamped document must be decided with reference to the Act in force at the date of the execution of it, but the penalty leviable is determined in all cases by the Act in force at the time the penalty is sought to

(*a*) I. G. R. No. 6509, 9th Dec. 1887; Stamp Manual, C. P., p. 8; Bengal Stamp Manual (1890), p. 152; Mad. B. P. No. 184, dated 14th Feb. 1888.

(*b*) Ref. (1884), I. L. R. 8 Mad. 15; s. c. Mad. B. P. No. 3573, 15th Oct. 1884.

be levied (*a*). The words 'the commencement of this Act' have been substituted for the words 'this Act comes into force' occurring in Act I of 1879 with reference to S. 3 (12), General Clauses Act, X of 1897, which runs thus :—

"'Commencement' used with reference to an Act or Regulation shall mean the day on which the Act or Regulation comes into force."

"cheque."

(7) "cheque" means a bill of exchange drawn on a *specified* banker and *not expressed to be* payable *otherwise* than on demand.

Cf. Act I of 1879, S. 3 (6).

Means :—*See* notes at pp. 18-9, *ante*.

Banker :—*See* notes at pp. 19-20, *ante*.

Cheque was defined in Act I of 1879 to be "a bill of exchange drawn on a banker and payable on demand." This definition has been altered in this Act so as to bring it into accord with that given in the Negotiable Instruments Act, XXVI of 1881 (*b*). A cheque is only a variety of "bill of exchange." The latter may be payable on demand or otherwise than on demand and may be addressed to any person. But a cheque must be (1) payable on demand and (2) drawn on a specified banker. The plaintiff in a suit agreed to lend money to the defendant for his trade debts, &c. In pursuance of the agreement the defendant gave his creditors 'chits' for certain sums. The chits were addressed to the plaintfff and he was thereby requested to pay the amounts mentioned therein. He did so and now sued for the amounts advanced. It was contended by the defendant that the 'chits' being cheques or bills of exchange were inadmissible in evidence, because unstamped. It was found that by the agreement the plaintiff was not constituted the defendant's banker within the meaning of section 3 (1) of Act I of 1879. Upon these facts it was held that the chits did not require a

(*a*) Ref. (1882), I.L.R. 5 Mad. 394 ; Narayanan Chetti *v.* Karuppathan (1881), I. L. R. 3 Mad. 251 ; In the matter of the application of Devi Ditta Mal, 7 P. R., 1885

(*b*) *See* Statement of objects and reasons, App. E.

stamp (*a*). "The plaintiff appears only to have undertaken to lend money as required for the purposes indicated, and that alone can hardly constitute him the defendant's banker" (*b*). But these documents would seem to be bills of exchange under this Act.

An instrument which purported to be a receipt for a sum of money from the saving account of a deposit with a Bank and specified the name of the messenger who was to receive the payment was held to be a receipt and not liable to duty as a cheque, on the ground that it could not be held to contain an unconditional order to pay the sum specified in it, merely on the assumption that the banker would pay the person described in it as messenger or agent the sum specified (*c*).

Local Fund bills presented for payment at the Treasury are not in the nature of cheques (*d*) but require to be stamped as receipts (*e*). Cheques drawn by Local Fund Boards, Municipalities, Road-cess Committees and Managers of Court of Wards on Government treasuries or in favor of a Government officer should be stamped and do not fall under the general exemption of the proviso to section 3. (*f*)

Post-dated cheque:—A bill or cheque is not invalid by reason only that it is antedated or post-dated (*g*). The test of admissibility of a document is, whether it appears, when tendered in evidence, to be sufficiently stamped (*h*). In *Ramen Chetty v.*

(*a*) Ratnlal Rangildas *v.* Vrijbhukhan Parabhuram (1872), I. L. R. 17 Bom. 684.

(*b*) Per Telang J., *ibid*, at p. 685.

(*c*) *In re* Stamp Act, 38 P. L. R., 1912.

(*d*) Mad. G.O., 848, Rev., 9th April 1892, recorded in Mad. B. P. No. 263, 14th May 1812, and cancelling G.O., No. 883, 27th Oct. 1890.

(*e*) Mad. G.O., 929, Rev., 6th Sept. 1892, recorded in Mad. B. P. No. 511, 7th Oct. 1892.

(*f*) *See* notes under s. 3, below.

(*g*) Bills of Exchange Act, 1882, s. 13 (2); Bull *v.* O'Sullivan (1871), L.R. 6 Q. B. 209; Gatty *v.* Fry (1877), L. R. 2 Ex. D. 265; Misa *v.* Currie (1876), 1 App. Cas. 554. *See* notes at p. 81, *ante*.

(*h*) Royal Bank of Scotland *v.* Tottenham, [1894] 2 Q. B. 715; Gatty *v.* Fry, and Bull *v.* O'Sullivan, *supra*.

Muhomed Ghouse (*a*) it was held that a post-dated cheque was not liable to duty as a bill payable otherwise than on demand, and such an instrument was admitted in evidence on the ground that in determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, the document itself as it stands, and not any collateral circumstances which may be shewn in evidence, must be looked at (*b*).

See notes under s. 2 (2), "bill of exchange," above and Art. 21, "cheque," Sched. I, below.

"Chief Controlling Revenue-authority."

(8) "Chief Controlling Revenue-authority" means—

(*a*) in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces and the Chief Commissioner of Oudh—the Board of Revenue;

(*b*) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner;

(*c*) in Sindh—the Commissioner;

(*d*) in the Punjab and Burma *including Upper Burma*—the Financial Commissioner; and

(*e*) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf:

Cf. Act I of 1879, S. 3 (7).

(*a*) (1889) I. L. R. 16 Cal. 432.

(*b*) *See* also Sakharam *v.* Bapu (1903), I. L. R. 27 Bom. 279; but see Forster *v.* Mackreth (1867), L. R. 2 Ex. 163, and I. G. R. No. 1264 (F) dated 28th February 1871.

Commissioners of Inland Revenue perform under the English Stamp Act the functions of the Chief Controlling Revenue-authority in India.

The powers exercisable by the Chief Controlling Revenue-authority are dealt with in sections 39, 45, 51, 56, 57 and 70.

Clause (a).—The Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh is now "the Lieutenant-Governor of the United Provinces of Agra and Oudh.' (*a*)

Clause (b).—In the town of Bombay, the Superintendent of Stamps, Bombay, has been appointed Chief Controlling Revenue-authority.(*b*)

Clauses (d) and (e).—In the North-West Frontier Province, for Punjab" read "North-West Frontier Province," for "Financial Commissioner" read "Revenue Commissioner," for "Local Government" read "Chief Commissioner" and for "Official Gazette" read "Gazette of India."(*c*)

For Central Provinces and Berar, the Financial Commissioner, Central Provinces and Berar (*d*) and for Assam, the Superintendent of Stamps, Assam,(*e*) have been appointed the Chief Controlling Revenue authorities.

In Baluchistan, the Revenue Commissioner has been appointed the Chief Controlling Revenue-authority for that province.(*f*)

"collector." (9) "Collector"

(*a*) means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector

(*a*) *See* the United Provinces (Designation) Act, VII of 1902, and Proclamation No. 996 P. dated the 22nd March 1902, I. G., 1902, Pt. I, p. 228.

(*b*) B G., 3rd April 1879, Part I, p. 451.

(*c*) *See* S. 6 (1) of the North-West Frontier Province Law and Justice Regulation, 7 of 1901.

(*d*) *See* Central Provinces Gazette, Notn. No. 320, dated the 8th November 1909.

(*e*) *See* Assam Gazette, 14th April 1883, Pt II, p. 176.

(*f*) Notification No. 9518, 9th December, 1899.

of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a district, and

(*b*) includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf:

Cf. Act I of 1879, S. 3 (8).

Clause (b).—The words 'in this behalf' in clause (b) mean 'for the performance of all or any of the duties imposed by this Act upon the Collector' (*a*).

All Sub-Collectors, Head Assistant Collectors and Deputy Collectors in charge of divisions, (*b*) and Assistant Collectors who are First-class Magistrates and in charge of divisions (*c*) in the Madras Presidency, have been appointed to be Collectors, in respect of the powers conferred under sections 16, 18, 31, 32, 38, 39, 40, 41, 42, 48, 49, 52 to 56, 61 and 73 of this Act, within the limits of their respective jurisdictions.

All Registering officers in the Madras Presidency have been appointed under Act III of 1877 (now Act XVI of 1908) to be Collectors in respect of the powers conferred under S. 16 of the Stamp Act (*d*). All Tahsildars and Deputy Tahsildars in independent charge in the Madras Presidency have been appointed to be Collectors in respect of the powers conferred under Sections 18, 49 and 52 to 55 of the Stamp Act within the limits of their respective jurisdictions (*e*).

The Chief Commissioner of Ajmer-Merwara has declared that "Collector" includes Assistant Commissioners of the Province (*f*).

(*a*) Advocate-General's opinion embodied in Mad. G O. No. 1879, Judicial, 4th August 1879.

(*b*) Notn No. 511, 20th November 1899, Ft St Geo. Gazette, 1899, p. 1756.

(*c*) B P No 162/1534-R., Mis., 18th August 1905

(*d*) B. P No 320, 9th Dec 1899.

(*e*) B. P. No. 268/1716-R., Mis, 18th Nov. 1908

(*f*) *See* I G., 1902, Pt. II, p. 501.

(10) "conveyance" *includes a conveyance on sale and every* instrument by which property, whether moveable or immoveable, is transferred *inter vivos, and which is not otherwise specifically provided for by Schedule I.*

"conveyance."

Cf. Act I of 1879, S. 3 (9) and 54 & 55 Vic. c 39. s. 54.

Includes:—*See* notes at pp. 18-9, above

"Conveyance," as defined in Act I of 1879, was limited to transfers of property made by way of sale and excluded all such transfers as were not so made. So, an instrument by which the Maharaja of Durbhanga, in consideration of his younger brother relinquishing all claims upon the Raj property, granted to him a certain pergunnah and two and a half lacs of rupees for maintenance, was held to be neither a 'conveyance' nor a 'settlement,' nor an 'instrument of partition,' within the meaning of Act I of 1879 but an arrangement for the transfer of property.(*a*) To provide for such a case, the definition has been altered in this Act so as to include all conveyances *inter vivos* which are not specifically provided for in Schedule I, (*b*) and has been brought more in accord with the definition given in the Stamp Act of 1869. The instruments of transfer *inter vivos* which are specifically provided for in the Schedule are: - Agreement relating to the deposit of Title-deeds (6), Composition-deed (22), Exchange of property (31), Gift (33), Lease (35), Mortgage (40), Re-conveyance (54), Release (55), Settlement (58), Transfer (62), Transfer of Lease (63) and Trust (64).

Property.—Transfer of moveable as well as that of immoveable property are included in the definition of 'conveyance.' "Immoveable property" includes "land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth." "Moveable property" means "property of every description, except immoveable property." (*c*)

(*a*) In the matter of the Maharaja of Durbhanga (1880), I L R. 7 Cal. 21

(*b*) Report of the Select Committee, App E, cccxv.

(*c*) General Clauses Act X of 1897, S. 3 (25) and (34).

The following have been treated as property and instruments by which they were assigned have been held to be conveyances of property · ' good will of a business' (*a*) ; ' trade mark' (*b*) ; ' right under a decree' (*c*); ' fixtures' (*d*); a share in a patent, and a sole license to use the invention protected by the patent (*e*) ; right to dig stone (*f*). Interest in a policy of insurance is property within the meaning of this Act and the transfer of such an interest is now specially provided for by Art. 62 (c), Sch. I.

Sale.—" Sale ' is defined by s. 54 of the Transfer of Property Act to mean " a transfer of ownership in exchange for a price paid or promised or part paid or part promised." A similar definition of ' sale ' in relation to goods is given in section 77 of the Contract Act. The word ' price ' occurring in the definition of the term ' sale ' ordinarily means money. (*g*) As to whether a conveyance on sale under this sub-section would mean only such a conveyance as the consideration for the sale is a money price and not the equivalent of money, such as stock or marketable security, *see* " CONVEYANCE ON SALE," below.

Agreement for sale.—An agreement for the sale of property does not of itself vest any interest in such property (*h*) and is

(*a*) Pottor *v* Commissioners (1854), 10 Ex. 147 ; Benjamin Brooke and Co *v* In. Rev Commissioners, [1896] 2 Q. B. 356 ; Muller and Co's Margarine *v* In. Rev. Commissioners, [1900] 1 Q. B. 310, at p. 318 ; West London Syndicate *v*. In. Rev Commissioners, [1898] 2 Q. B. 507.

(*b*) Benjamin Brooke and Co. *v*. In. Rev. Commissioners, *supra*.

(*c*) Prince Golam Mahomed *v*. Indrachand Jahuri (1871), 7 B.L.R. 318; Mad., B. P No. 571, 23rd March 1887, and No. 1292, 9th May 1888.

(*d*) Horsfall *v* Hey (1848), 2 Ex 778.

(*e*) Smelting Company of Australia, Ld. *v*. Commissioners, [1897] 1 Q. B. 175.

(*f*) Scott *v*. Banna, 44 P. R. 1881.

(*g*) Queen-Empress *v*. Appavu (1885), I. L. R. 9 Mad. at 142 ; Volkart *v*. Vottivelu (1889), I. L. R. 11 Mad. 459, at p. 467. But in Ref. (1881), 1 L. R 3 All. 788, at p. 798, the word is defined in wider terms thus:—Money means and includes not only coin, but also bank notes, Government promissory notes, bank deposits and otherwise and generally any paper obligation or security that is immediately and certainly convertible into cash, so that nothing can interfere with or prevent such conversion.

(*h*) Transfer of Property Act (IV of 1882), s 54 : *cf*. In. Rev. Commissioners *v*. Angus (1889), 23 Q. B. D., 579.

therefore not a conveyance. By an instrument the Conservators of the Thames agreed to grant permission during their pleasure to the appellants to construct and retain a jetty in consideration of an annual payment yearly so long as the jetty was allowed by the Conservators to remain. It was held that the instrument was not chargeable with duty either as "a conveyance on sale" or as a "bond, covenant or any instrument whatsoever," but only as an agreement (*a*). A document bearing a stamp of one rupee and reciting *inter alia*, "I have sold to you the standing trees of the two villages for Rs. 1,601 on conditions that those young trees whose trunks do not exceed two feet in circumference, should not be cut by you, and that I will give you a written information to cut the trees of the said villages when you shall have to cut the trees and remove them .....," was held not to be a conveyance (*b*); and the judges who took part in this case did not agree as to whether it was to be treated as an agreement for sale.

Conveyance on sale.—Under s. 54 of the English Stamp Act, 1891, "conveyance on sale" includes every instrument, and every decree or order of any Court or of any Commissioners, whereby any property, upon the sale thereof, is transferred to or vested in a purchaser, or any other person on his behalf or by his direction (*c*). S. 12 of the Finance Act, 1895, provides that "where after the passing of this Act, by virtue of any Act, any property is vested by way of sale in any person" duty shall become payable as upon a conveyance on sale under the Stamp Act, 1891. (*d*) But under the Indian Act a conveyance on sale must be an instrument of transfer between two or more parties and therefore does not include a *decree* or an *order of Court* by which property upon the sale thereof is transferred to a

(*a*) Conservators of River Thames *v.* Commrs of In. Rev., [1886] 18 Q.B. 279.

(*b*) Vohra Mahamadali Lukmanji *v.* Ramchandra Anant (1897), I.L.R. 22 Bom. 785.

(*c*) *See* Appendix B, p. clxxv.

(*d*) *See* Attorney-General *v.* Felixstowe Gaslight Co., [1907] 2 K. B. 934; cf. Great Western Railway *v.* Commissioners [1894] 1 Q. B. 507.

purchaser. Such cases would include "certificates of sale" specially provided for in Art. 18, Sch. I of this Act.

The expression a "conveyance on sale" ordinarily means a conveyance where there is a definite contract of purchase and sale preceding it. For the purposes of the Stamp Act it means a conveyance the same as if it were upon a contract of purchase and sale, as the substance of the transaction is to be looked at (*a*). Under the English Act there may be a conveyance on sale, although the consideration for it is not cash or money, but may include or consist of stock or marketable securities. (*b*) But under this Act, as the price given in consideration for a transfer on sale ordinarily means money and as there is no provision similar to s. 71 and s. 55 respectively of the English Stamp Acts of 1870 and 1891, making stock or marketable security consideration equally with money for a conveyance on sale, does a conveyance in pursuance of a sale the consideration for which is stock or marketable security fall under this definition, or is it to be treated as an "exchange" under Art. 31, Sch. I of the Act? Seeing that the language of the definition of "conveyance" has been adapted from the English Stamp Act and that s. 21 of this Act makes a general provision for calculating the *ad valorem* duty with which an instrument is chargeable in respect of any stock or marketable security, it may be inferred that such an instrument would be treated as a conveyance on sale and not as an exchange (*c*).

By a deed of "apport" executed in France, property in France was transferred by one English company to another English company, the consideration for the transfer being shares in the latter company which were to be issued, and delivered to the former company, in England. It was held by

(*a*) Per Lord Esher, M. R., in Great Western Ry. Co.. *v.* Commrs. of In. Rev., [1894] 1 Q. B. 507, at p. 512.

(*b*) John Foster & Sons *v.* Commrs. of In. Rev., [1894] 1 Q. B. 516, at pp. 527, 529, 531.

(*c*) *See* The Kondoli Tea Company, *In re* (1886), I, L. R. 13 Cal. 43, in which a transfer of an estate made for a consideration consisting of the shares and debentures of a company was held to be a conveyance on sale, though the question was not raised whether it should be treated as an exchange.

the House of Lords that the instrument was a "conveyance on sale," whereby property upon the sale thereof was transferred to a purchaser within the definition contained in s. 54 of the Stamp Act of 1891, and liable to duty thereunder on the ground that the instrument related to "a matter or thing to be done in the United Kingdom" within s. 14, sub-s. 4 of the Act. (*a*)

A conveyance on sale implies that the seller parts with his property for a price which the purchaser pays; where therefore no price is paid or promised, the transaction cannot operate as a conveyance on sale. Thus, where a conveyance of freehold estate was executed by a father to the son, reciting that he was minded and had resolved to give and assure the same to his son as well in consideration of the natural love and affection which he entertained for his son, as also in consideration of the provision which his son had that day made by his bond or obligation in writing of 1500*l.* in augmentation of the portions or fortunes of his eight sisters, it was held that this was not a sale to the son (*b*) By a marriage settlement, in consideration of 4000*l.* advanced by the father of the intended wife as a portion and in consideration of the marriage, the uncle of the intended husband covenanted to pay to the trustees of the settlement for the use of the husband and wife during their joint lives, an annuity of 800*l.* It was held that the deed of settlement did not require to be stamped as upon the sale of any annuity (*c*). But where a legatee under a will agreed with the executor to take payment, or part payment, of the legacy in stock or securities of the testator, the transfer deed executed in pursuance of the agreement was held a conveyance on sale. (*d*)

Conveyance or Settlement:—By two deeds made between B. and H. (who was the heir to B's settled estates), after reciting that H. had undertaken the payment of the mortgages on the estates, and that B. was indebted to H. in certain sums, it was

(*a*) In. Rev. Commrs. *v* Maple & Co. (Paris) Limited, [1908] A C 22, reversing the decision of the Court of Appeal, [1906] 2 K. B. 834.

(*b*) Denn *d* Diamond *v* Manifold (1825), 6 D. & R. 328

(*c*) Massey *v.* Nanney (1837), 3 Bing. N. C., 478

(*d*) Dawson *v.* Commrs. of In. Rev., [1905] 2 Ir. Rep. 69.

witnessed that in pursuance of a family arrangement B. conveyed to H. his unsettled estates subject to the mortgages, and also certain specified chattels; but power was reserved to B. and H. to cancel, alter or make void the family arrangement at any time. It was held that the deeds were not part of a family arrangement but were conveyances on sale and that the stamp should be calculated as if the consideration for the sale were the mortgages and the debt due to H (*a*). In this case Kennedy, J., observed :—

" There may be things which are clearly not conveyances on sale and yet are family arrangements which involve certain considerations of money's worth being dealt with in the transaction, but as to which it could not correctly be said that there has been a conveyance on sale ; but it seems to me equally clear that there may be things which are in a sense family arrangements but which also in value and are, so far as the documents are concerned, conveyances on sale. If the method or machinery adopted is really a conveyance on sale—a sale for money—it matters not that the ultimate purpose of the parties in making use of this machinery may be of an indirect nature— not necessarily involving a money gain to the one side or to the other. There may not be a bargaining for the purpose of making a profit, in the sense of money profit, but none the less it appears to me that, if there is a conveyance of property and money given for it, it matters not whether or not it is entered into by the one party or the other because it will facilitate the maintenance of good relations between the parties, or help, it may be, the buyer to preserve intact an estate in which he has, either from affection or from the prospect of inheritance, a special interest * * * * * I have come to the conclusion that the so-called cancellation clause does not mean that there is not to be a real conveyance on sale or one which is not intended to be binding, but that the family arrangement may be at any time varied, while there is an absolute sale of the chattels and the other interests under this deed for the sum which is expressed to be thereby released." (*b*)

Transfer of property :—Where no property actually passes by a transaction, a deed effecting it cannot be a conveyance on sale. Thus, a document by means of which the certified purchaser of property sold by auction in execution of a decree purported to relinquish in favor of a person who was the real purchaser of the property all claims that he might have in respect of the property was held not to be a conveyance but a release, as

(*a*) Marquess of Bristol v. Commrs. of In. Rev., [1901] 2 K. B. 336.

(*b*) *Ibid.* at pp. 339-340.

the executant stated that he was not the owner of the property and did not pretend to transfer anything (*a*). Again, where in consideration of a sum of money paid and another sum agreed to be paid by a person, a Company granted him by deed the exclusive right, license and authority to carry on asphalte business generally in the Counties of Lancaster and Chester only with the asphalte covenanted to be supplied by the Company, it was held that the deed was not a conveyance on sale, no property being in fact conveyed by it (*b*). A document whereby the party executing it purported to sell his right, title and interest in certain receipts for shares, and to execute in future a *pucka* document of sale thereof, and acknowledged the receipt of Rs. 10,001, was held to be an agreement and not a conveyance, the property in the receipts not being intended to pass forthwith (*c*).

Covenants:—A covenant entered into by a person for value to abstain from doing an act or a class of acts with respect to his own property is not a sale. So, where the owner of a coal mine under and adjacent to a railway, in consideration of a sum of money received from the railway company, executed an instrument in favour of the company, acknowledging the receipt of the amount in satisfaction of all claims by him in respect of the coal and undertaking not to work or get the coal, the instrument was held not to be a sale of property or of any interest in property (*d*). The mention of matters that are incidental to the conveyance and sale of the property and relative to the title thereto, *e.g.*, the usual covenant for title, does not require a further stamp duty; and so a conveyance must be taken to include the usual covenants for title and the stamp for the conveyance covers the whole (*e*). Nor would the case be different

(*a*) Ref. (1902), I. L. R. 24 All. 372.

(*b*) Limmer Asphalte Paving Co. *v.* Commissioners (1872), L. R. 7 Ex. 211.

(*c*) Heptulla Shekh Adam Co. *v.* Esafali Abdulali (1989), I. L. R. 14 Bom. 316.

(*d*) Great Northern Ry. Company *v.* In. Rev. Commrs., [1901] 1 Q.B. 416.

(*e*) Ref. (1876), I. L. R. 1 Mad. 133.

if the vendor agree that other property of his shall be liable for any loss, in case it should be found that he had no title to the property conveyed by him (*a*). Similarly, a covenant in a deed by the transferee of certain shares that he would observe all the stipulations for the time being affecting the holders of shares is not liable to further duty (*b*).

Recital of disposition:—If a deed of conveyance recites that the moveables were already delivered to the purchaser, these moveables are certainly not transferred to the purchaser by the deed and the vendor cannot be called on to increase the stamp so as to include the value of the moveables(*c*). Again, an instrument which is a will does not become a deed of gift or release or a deed of assignment merely because some past acts of dispositions are recited in it (*d*).

Same individuals in different capacities:—A conveyance of property by a person under one denomination to himself under another denomination as purchaser is a conveyance on sale. Thus, a deed conveying all the properties of the members of a partnership to a company composed exclusively of the same partners, the whole of the capital of the company consisting of shares and debenture stock being allotted to the partners in proportion to their shares in the partnership, was held to be a conveyance on sale (*e*). Upon exactly similar facts in an earlier

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(*a*) From Bd of Rev., N. W. P. & Oudh to Commr. of Stamps, No. 200/Fs. 100, 23rd March 1888.

(*b*) Wolseley *v.* Cox (1841), 2 Q. B. 321.

(*c*) Ref. (1895), 23 Cal. 283 at p. 288. *See* Progs. of the Legislative Council, App. E, p ccoxxvi.

(*d*) Haribai *v.* Krishnarav (1897), 22 Bom 632 at p. 635. It is pointed out in *Nathu* v. *Hansraj* (1906), 9 Bom. L.R 119, that this decision was decided on the words of the Stamp Act of 1879 and that it may be otherwise under the Stamp Act of 1899 with reference to the words "every instrument by which property whether moveable or immoveable is transferred *inter vivos*" in this sub-section But it is submitted that the alteration in the definition in this Act would not render the above decision no longer applicable.

(*e*) Foster and Sons, Ld. *v.* Commrs. of In. Rev., [1894] 1 Q. B. 516.

Calcutta case (*a*), where the partners who were owners of a tea estate conveyed by an instrument all their rights in the estate to a company composed exclusively of themselves for a consideration consisting of the shares and debentures of the latter, it was held that the instrument was a conveyance on sale.

Companies:—Instruments effecting the amalgamation of one company with a larger company or the transfer of properties of one company to another company in lieu of shares of the latter company allotted to the shareholders of the former company have been held to be conveyances on sale and chargeable with duty as such. Thus, where a railway company was amalgamated under statutory sanction with another larger railway company and the shareholders of the former company were in lieu of and exchange for their shares to become holders of the stocks of the latter company, it was held that the transaction was in substance a transfer of property for a consideration on sale, notwithstanding that there was only a fusion of the minor company in the larger company (*b*). Again, where by an instrument entered into in pursuance of an agreement, a shareholder in one company transferred his shares to another company in exchange for certain shares in the latter company, it was held that the transaction was a conveyance on sale of the shares within sections 54 and 55 of the Stamp Act, 1891, and not an exchange (*c*).

(*a*) The Kondoli Tea Company, *In re* (1886), I. L. R. 13 Cal. 43. In this case, as in the preceding English case and the case of *Coats* v. *Inland Revenue Commissioners*, [1897] 1 Q. B. 778; 2 Q. B 423, which followed it, the consideration for the transfer was shares or marketable security. On the construction of the words of the definition contained in ss 70 and 71 of the English Act of 1870 and ss. 54 and 55 of the Act of 1891, it was held in the above two English cases that the transfer of property in consideration for shares is a *conveyance on sale* and expressly held in the latter case that such conveyance was not an exchange but only a conveyance on sale. But there is no similar provision in the Indian Act As to whether such conveyances should be treated as conveyances on sale or exchanges, *see* notes at p. 52, above.

(*b*) Great Western Ry. Co. *v* Commrs of In. Rev., [1894] 1 Q. B. 507.

(*c*) Coats *v.* In. Rev. Commrs., [1897] 2 Q. B. 423, affirming the decision in [1897] 1 Q. B. 778. Under the Indian Act it is doubtful whether such an instrument will be treated as an exchange, as shares may be considered equivalent to money. *See* notes, p. 52, above.

A deed of conveyance which was entered into between an old Bank in liquidation, its liquidators and a new Bank, recited that by an agreement, dated the 3rd February 1893, between the old Bank and the liquidators of the one part and the new Bank of the other part, it was agreed that the old Bank and its liquidators should transfer to the new Bank all the lands, buildings, goods, &c. of the old Bank, and that the new Bank in consideration of such transfer agreed to pay and discharge all debts, liabilities, &c., and that in further consideration of such transfer it was agreed that every member of the old Bank should in respect of each share of £25 held by him be entitled as of right to claim an allotment to himself of one share of £25 in the new Bank with the sum of £12-10 per share audited and paid up thereon, and that the said new Bank should allot the shares claimed, and recited also that to carry into effect the said agreement of the 3rd February 1893, the old Bank and its liquidators had agreed to transfer to the new Bank its immoveable property in Bombay valued at a lac and a half rupees, and witnessed that in consideration of the said agreement and of such proportionate part of the consideration mentioned in the agreement, the lac and a half, the old Bank granted and the liquidators confirmed to the new Bank the said immoveable property at Bombay. It was held that the instrument was by its very terms a conveyance of property at an agreed value and that the circumstance that the agreed value was part of a larger consideration for the whole transaction could not affect the character of the instrument and that the transaction was substantially a purchase and sale of the property and not merely a reconstruction of the company (*a*).

Partners:—An instrument whereby a retiring partner transfers his estate and interest in the assets of the partnership to the continuing partner for the consideration of a certain sum of money is a conveyance on sale. Thus, where by an indenture reciting that a dissolution of partnership between two partners had taken place, and the share of the retiring partner in the

(*a*) Ref. (1895), I.L.R. 20 Bom. 432, relying on Great Western Ry. Co. *v.* Commrs. of In. Rev., [1894] 1 Q. B. 507.

assets of the firm had been found to be a certain specified sum, and an arrangement had been made by which a portion of that sum was to be paid at once by the continuing partner and the remainder secured by a mortgage of the partnership assets, the retiring partner conveyed to the continuing partner all his estate and interest in the partnership assets, it was held that this indenture was a conveyance upon sale (*a*). This decision was followed in a similar case where the firm was composed of more than two partners and the share of the retiring partner was conveyed to those who remained in the firm (*b*).

Where a partner purporting to be entitled to a four annas share in a going Pressing Factory, transferred by a document the whole of that share to the other partner interested in the factory for a certain sum and the document recited that nothing remained due to him in respect of the "aforesaid things," it was held that the document was a conveyance on sale of the quarter share in the Pressing Factory and not a release (*c*).

The instrument in the following case was held to be both a conveyance and a release. A deed of dissolution of partnership was executed between T. & S. containing the following conditions :—T. to pay to S. Rs. 7,000 "in full of his share and interest in the partnership business, assets and premises, and to pay all the debts and liabilities thereof, and S. to give T. a release of all his share in the lands, premises, &c., and other partnership assets." The deed recited that the said sum of Rs. 7000 was paid and received and that S. "releases, quits claim to..... and upon the said land, &c." It was ruled that the deed was not only a dissolution of partnership but also a conveyance and a release (*d*).

The substance of the transaction should be considered upon the question whether an instrument is liable to stamp duty and

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(*a*) Christie *v.* Commissioners (1866), 4 H. and C. 664; L.R., 2 Ex. 46.

(*b*) Phillips *v.* Commissioners (1867), L R. 2 Ex., 399. *See* also Troup *v.* Commrs. of In. Rev. [1891] T. L. R 610.

(*c*) *In the matter of* Hiralal Nawalram (1908), I. L. R. 32 Bom. 505.

(*d*) Mad. B. P. No. 1276, 7th May 1883.

not merely the language of the operative part or parts of the instrument (*a*). So, where a transaction is in substance a sale of a share in a partnership, and the transfer of a share in a lease only forms part of the subject-matter of the sale, as being a part (though a considerable part) of the partnership assets, though the instrument is so framed as to appear that it is mainly a transfer of the share of the lease, the transaction should be regarded not as the transfer of the lease but as the sale of a share in a partnership and the duty payable in respect thereof should be that falling under this article (*b*). Where a railway company was amalgamated by an Act of Parliament with another larger railway company and was dissolved as from the date of the amalgamation, and the share-holders of the former company were, in lieu of and exchange for their shares, to become holders of the guaranteed stock of the latter company and a copy of the Act was declared chargeable with the same duty as if it were a transaction effected by an instrument between private persons, it was held that the transaction was in substance a transfer of property for a consideration as if it were upon a contract of purchase and sale and therefore a conveyance on sale, notwithstanding that there was only a merger of the legal persons of the minor company in the larger company and that the consideration passed not to the smaller company but to the shareholders of that company (*c*). But where, by one and the same deed there was a conveyance of freehold lands, buildings and erections thereon and the goodwill of a business and a transfer of interest secured by leases, it was held that the deed was chargeable as a conveyance in regard to the freehold lands, &c., and as a transfer of lease with a duty of Rs. 5 under Art. 60, Sch. I of Act I of 1879 in regard to the transfer of each lease (*d*). But as the amending Act XIII of 1897 introduced Article 60A (the present Article 63) by which

(*a*) Christie *v.* Commrs. of In. Rev. (1886), L. R., 2 Ex. 46, at p. 50; Great Western Ry. Co. *v.* Commrs. of In. Rev., [1894] 1 Q. B. 507, at p. 513; *In re* The Menglas Tea Estate (1885). I. L. R. 12 Cal. 383, at p. 386; Subbaraya *v.* Vithilinga (1892), I. L. R. 16 Mad. 85, at p. 89.

(*b*) *In re* The Menglas Tea Estate (1885), I. L. R. 12 Cal. 383.

(*c*) Great Western Ry. Co. *v.* Commrs. of In. Rev., [1894] 1 Q. B. 507.

(*d*) Ref. (1895), I.L.R. 23 Cal. 283.

a transfer of a lease by way of assignment was made liable to the same duty as a conveyance, transfers of leases as in the above case are now chargeable with the same duty as conveyances.

Mortgagor's right:—An instrument whereby a mortgagor relinquishes his title to the mortgaged property in favour of the mortgagee is a conveyance on sale, the consideration being the discharge of the debt (*a*). Similarly, a conveyance by a mortgagor to an equitable mortgagee, though made in pursuance of an order of Court foreclosing the mortgagor's right of redemption on default of payment and directing him to execute a conveyance to the mortgagee, was held to be a conveyance on sale, because the mortgagor was released from the debt to the extent of the value of the property, and the conveyance was made in consideration of a debt due (*b*)

Maintenance:—A document by which a person made over certain lands to his kinsman's widow in satisfaction of her claim for maintenance, in pursuance of a razinamah filed in a suit for maintenance brought by her, was held to be a conveyance on sale and not a settlement or gift, as the consideration was other than that of marriage (*c*)

Co-parceners:—In a case in which it appeared that an agreement was made between A and four other co-parceners whereby A received a portion of the joint property under his management, contracting at the same time to fulfil certain conditions, and some time afterwards, A, finding himself unable to fulfil the conditions imposed, executed a document whereby he accepted Rs. 3000 for the payment of his debts and resigned in consideration thereof his title and interest in the joint property, it was ruled by the Madras Board of Revenue that this was not a release but a conveyance, and that the execution of a previous instrument by the parties did not affect the character of the

(*a*) Sinapaya *v.* Shivapa (1891), I.L.R. 15 Bom. 675.

(*b*) Huntingdon *v.* Commissioners, [1896)] 1 Q. B 422.

(*c*) Ref (1898), I. L R. 21 Mad. 421; s. c. Mad. B. P. No. 48, 19th Feb. 1898.

later document (*a*). But it has been held by the High Court of Madras that such an instrument is a release (*b*).

Assignment of chose in action:—An assignment of a debt, whether a decree-debt or not, requires to be stamped as a conveyance (*c*). A letter whereby a creditor of the writer of it was authorised to receive a sum of money due to the latter from a third person for the price of goods sold was held not to be an order for the payment of money but an assigment of debt chargeable as a conveyance (*d*).

Where S. who was entitled to the delivery of some gunny bags under a certain contract with the defendant, executed a document to the plaintiff by which he assigned the benefit of the said contract to the plaintiff and which contained the words "I have sold the whole of my right and interest in this contract . . . . and in the goods mentioned therein to Thakoor Nathoo Gangaram," that is, the plaintiff, it was held that the document was not exempt as one relating to the sale of goods or merchandise exclusively, but was an assignment of the obligation by the defendant to deliver to S., that thus it was a chose in action, *i.e.*, a legal right, which had been transferred by S. to the plaintiff and that the property transferred was the right to get the goods delivered to him and liable to stamp duty as a conveyance on sale (*e*). It has been held to the same effect on the construction of s. 59 (1) of the English Stamp Act 1891, that the benefit of a contract is property and an assignment of the benefit of a contract is liable to an *ad valorem* stamp duty (*f*).

Trust property:—Where a transfer by a trustee to a *cestui que trust* was drawn in the form of a conveyance for a consideration

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(*a*) B. P. No. 1655, 1st Nov. 1880.

(*b*) Ref. (1894), I. L. R. 18 Mad. 233.

(*c*) Cf. Mad B. P. No. 192, 19th May 1887.

(*d*) Nandubai *v.* Gau (1902), I. L. R. 27 Bom. 150; *see* notes under s. 2 (3), pp. 25-9, *supra*.

(*e*) Nathu Gangaram *v.* Hansraj Morarji (1906), 9 Bom. L. R. 119.

(*f*) Danubin Sugar Factories *v.* In. Rev. Commrs., [1901] 1 Q. B. 245; Smelting Company of Australia *v.* In. Rev. Commrs., [1897] 1 Q. B. 175. For s. 59 of the English Stamp Act, *See* App. B, p. clxxvii, below.

of Rs. 10, it was held that, as the parties thought it fit to frame the instrument as a sale deed, it required to be stamped as a conveyance (*a*). Turner, C. J., observing,

"Nor was it necessary that it should have been drawn in such a form as to render it liable under the Act, for a transfer by trustees of trust property to a *cestui que trust* in pursuance of the trust need not be made for a pecuniary consideration, and were the nominal consideration omitted, the transfer would not have been a conveyance as defined in the Act."

But, by Art. 62, clause (e) of Schedule I of this Act, it has been provided that a transfer by a trustee to the beneficiary of trust property *without consideration* is liable to a duty of Rs. 5 or a smaller amount as the case may be. It would seem to follow from this that all such transfers purporting to be made *for consideration* should not be similarly stamped, and that they have to be stamped as conveyances in accordance with the above decision. But *see* notes under Art. 62, Schedule I, as to the construction of clause (e) which is not free from doubt.

See notes under Arts. 23, 62 and 63, Sched. I.

"duly stamped."

(11) "duly stamped," as applied to an instrument means *that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in British India :*

Cf. Act I of 1879, s. 3 (10).

Duly stamped :—Under Act I of 1879 "duly stamped" as applied to an instrument meant, stamped or written upon paper bearing an impressed stamp in accordance with the law in force in British India when such instrument was executed or first executed (*b*). This definition has been amended by the present Act, so as to make it applicable to instruments first executed

(*a*) Ref. (1884), I. L. R. 7 Mad. 350.

(*b*) S. 3 (10), Act I of 1879,

abroad and afterwards stamped in British India (*a*). "Law for the time being in force in British India" includes all rules made under this Act or other Acts previously in force by the Local Governments and the Governor-General in Council (*b*).

By reason of the above definition of "duly stamped," an instrument will not be one "duly stamped," if it be (1) unstamped, or (2) insufficiently stamped, or (3) deemed to be unstamped under section 15, whether sufficiently or insufficiently stamped, or (4) not stamped in accordance with the Act and the rules made under it.

In the first three cases above, the instrument may be certified as duly stamped on payment of duty or penalty, or both, as the case may be, under section 42 of this Act. In the last case the instrument may be certified duly stamped under Stamp Rule 16 of the Rules (*see* Appendix II) made by the Governor-General in Council under section 37.

Manner of stamping:— The manner of stamping is governed by sections 10 to 14 and sections 16 to 19 of the present Act and by the rules framed by the Government of India which are given in Appendix No. II. The rule (rule 6 under the new Act) (*c*) framed by the Government of India to the effect that, where a single sheet of paper is found insufficient to admit of the entire instrument being written on the side of the paper which bears the stamp, so much plain paper may be subjoined thereto as may be necessary for the complete writing of such instrument, does not prohibit writing on the reverse side of the impressed stamp paper, and therefore a writing on both sides of the stamp paper does not make the instrument not 'duly stamped' within the meaning of this sub-section (*d*). But where a promissory note was wholly written on a hundi paper of the value of Re. 1—8—0 and another hundi paper of the value of 12 annas was pasted on to the first hundi paper to make up the stamp required for the promissory note, it was held that the

(*a*) Statement of Objects and Reasons. *See* App. E.

(*b*) *See* section 76 (2) of this Act and Act I of 1879, section 57.

(*c*) *See* Appendix No. II.

(*d*) Ref. (1883), I.L.R. 7 Mad. 176.

promissory note was not duly stamped and therefore inadmissible in evidence, a portion of the instrument not having been written on each hundi stamp paper as required by Rule 6 (*a*). See further under Rule 6, Appendix II, *infra*.

Stamp vendor's endorsement:—Rule 9 published under sections 55 and 57 of Act I of 1879 [ss. 74 and 76 (2) of the present Act] by the Madras Government by Notification No. 129, dated 24th July 1883, required that the stamp-vendors should write the date of sale, the name of the purchaser, &c., on the back of every stamp paper that they sell. The High Court held that the omission to endorse the particulars required by this rule did not render a document not "duly stamped" (*b*). Under the Stamp Act of 1869, it was held that a document written partly on one and partly on another stamp paper, the two aggregating the proper stamp leviable was insufficiently stamped on account of the certificate required by s. 48 of that Act (*c*).

Rule 5 (b) of the stamp rules dated 3rd March 1882 made by the Governor-General in Council under the Act of 1879 provided that a stamp-vendor, in case he is not able to furnish a single stamp of the required value, should certify to that effect. It was held with reference to this rule that the absence of such certificate did not make the document in question not "duly stamped" within the intention of the Stamp Act (*d*). This rule however was cancelled by a subsequent notification and is not included in the rules issued under the present Act.

Rule 5 (e) made by the Governor-General in Council on the 3rd March 1882 provided that the part of an instrument written on plain paper subjoined to the stamp paper must be attested by the signatures or marks of all persons executing the document and of the witnesses to the same. With reference to this rule, it was held by the Full Bench of the Madras High Court,

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(*a*) Mohanlal Kunialal *v.* Kesarimull Chordiya (1913), 15 M.L.T. 203.

(*b*) Ref. (1888), I.L.R. 11 Mad, 377.

(*c*) Progs. M. H. C. 7 M. H. C. R., App. xxxvi; Cheyn Sukh Dass *v.* Musa, No. 26 P. R., 1876; Cf. In the matter of the application of Devi Dattamal No. 7, P. R., 1885.

(*d*) Queen-Empress *v.* Trailokya Nath Baral (1890), I.L.R. 18 Cal. 39.

Turner, C. J., dissenting, that this rule was *ultra vires* and inoperative for the purpose of declaring an instrument written contrary to the provisions thereof not 'duly stamped' within the meaning of section 3 (10) of Act I of 1879 (*a*) This rule has since been repealed (*b*).

Absence of the treasury seal on a stamp paper does not invalidate the instrument written on it, provided the stamp paper is genuine, and the instrument is otherwise duly stamped (*c*).

Documents properly stamped according to the law in force in Berar do not require to be stamped again in British India (*d*), nor do documents properly stamped in British India require to be stamped again in Berar (*e*).

Section 17 of the Act requires that an instrument chargeable with duty executed in British India shall be stamped at or before the time of execution, and therefore an instrument is not 'duly stamped' if it be stamped subsequently to execution (*f*). Under section 32 an instrument on which an endorsement has been made by the Collector under that section that the full duty with which the instrument is chargeable has been paid is deemed to be duly stamped. A sale certificate engrossed on a stamp paper furnished to a Court does not become not duly stamped by the stamp being inadvertently punched by some officer of the court (*g*). But an instrument is not duly stamped, though it bears a stamp of sufficient amount, if it be one of improper description (*h*). It was also ruled by the Board of Revenue, North-Western Provinces and Oudh, that an instrument does not become invalid *ab initio* by reason of its

(*a*) Ref. (1885), I. L. R. 8 Mad. 532.

(*b*) Cf. I. G. N. No. 2170, 22nd May 1891, Rule 7.

(*c*) Mad. B. P. Mis. No. 5587, 19th Dec. 1894.

(*d*) *Notn.* No. 2883, 5th May 1904 ; I. G., 1904, Pt. I., p. 319.

(*e*) *Notn.* No. 2885, 5th May 1904 ; I. G., 1904, Pt. I., p. 319.

(*f*) Jethibai *v.* Ramachandra Narotham (1889), I. L. R. 13 Bom. 484.

(*g*) Ref. (1894), I. L. R. 18 Mad. 285.

(*h*) *See* s. 37 ; cf. Radhakant Shaha *v.* Abhoy Churn Mitter (1882), I.L.R. 8 Cal. 721.

being written on an improper stamp and that it is of the same nature as if it was written on plain paper (*a*). But no provision was made in sections 34, 37 and 38 of Act I of 1879 to validate such documents on payment of duty and penalty, only unstamped or insufficiently stamped documents having been provided for by them. However, such an instrument may now be certified as duly stamped as from the date of execution by the payment of the *duty* alone without any penalty under the new section 37 of this Act.

See notes under ss. 12, 13, 14, 15, 35 and 37, *post*.

(12) "*executed*" *and* "*execution*" *used with reference to instruments, mean* "*signed*" *and* "*signature*":

"executed" and "execution":

This is new.

The definition has been taken from the English Stamp Act, 1891, (54 & 55 Vict. c. 39, s. 122) (*b*).

Farran, J., defined these terms thus:—

"'Executed,' means 'completed.' 'Execution,' is, when applied to a document, the last act or series of acts which completes it. It might be defined as formal completion. Thus, execution of deeds is the signing, sealing and delivery of them in the presence of witnesses. Execution of a will includes attestation. In each class of instruments, we have to consider when the instrument is formally complete"(*c*).

The Legislature does not seem to have followed this definition and has confined the meaning of the terms to signature.

Signed:—"Sign" with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions (*d*).

(*a*) From Board to Commissioner of Stamps, N. W. Provinces and Oudh, No. 164 vs. 141, 29th July 1889.

(*b*) *See* Appendix B, p. cci

(*c*) Bhawanji Harbum *v.* Devji Punja (1894), I L. R. 19 Bom. 635.

(*d*) The General Clauses Act, X of 1897, s. 3 (52).

"impressed stamp:" (13) *"impressed stamp" includes—*

(a) labels affixed and impressed by the proper officer and

(b) stamps embossed or engraved on stamped paper.

This is new.

This definition of 'impressed stamp' has been added so as to make it clear that the term includes both a stamp impressed by the Collector and also a stamp embossed on stamp-paper (*a*).

For rules as to kinds of stamps, *see* Appendix No. II.

"instrument:" (14) *"instrument" includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded.*

This is new.

The definition has been taken from the English Stamp Act (54 & 55 Vict. c. 39, s. 122).

Certain entries were made in the third person in a register, of sums payable with respect to the letting out of certain machines and bore the thumb marks of the hirers. They were to the effect that those persons hired a machine in consideration of a certain rent and would pay the hire at the time specified therein and, in default, would pay interest at a certain rate and further that the hirers would return the machine hired at their own cost. It was held that the entries were "instruments" within the meaning of this sub-section (*b*).

"instrument of partition." (15) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by the

(*a*) Select Committee's Report; *vide* App. E, p cccxiv.

(*b*) Mutsaddi Lal *v.* Harkesh (1913), 11 A. L. J. R. 966.

Revenue-authority *or any Civil Court and an award by an arbitrator directing a partition.*

Cf. Act I of 1879, s. 3 (11).

Partition:—Under the Stamp Act XVIII of 1869, only partition of immoveable property was chargeable, and consequently deeds of partition of moveable property were not liable to duty, but under Act I of 1879 and the present Stamp Act such deeds have been made liable. Though the words "co-owners" and "in severalty" would seem to apply to joint tenants, they would also apply to tenants in common and other co-sharers, and deeds of partition among them, as for instance, among the heirs to the estate of a Mahomedan, will fall within the definition.

In order that an instrument may fall within the first part of this sub-section, it must "of itself operate to release the joint interest of the other parties to the partition and create a sole interest in the person whose share it records"(*a*). So, a document signed by the members of a Hindu family and attested by witnesses, purporting to be an account or list of the share of one member of the family in the family property and reciting that the parents of the family were to enjoy certain land and that the outstanding debts were to be divided at a future date, was held to be not an award or a partition deed, but only a note that certain properties had on partition been allowed for the maintenance of the parents, and a memorandum of the particulars of the property which had on partition fallen to the share of one of the brothers; and to be liable to an agreement stamp as it was accompanied by an agreement for the future division of outstandings (*b*). S and R sued their brothers M and V for partition of family property. The defendants pleaded that the property had been partitioned in 1870 and that the various members of the family had been ever since in possession and enjoyment of their respective shares. At the hearing a document was produced by M dated the 13th January 1877 which was proved to have been signed by his three brothers, S, R and V, on the occasion of M's effecting a mortgage of part of the

(*a*) Ref. (1884), I.L.R. 7 Mad. 385.

(*b*) Ibid.

property. This document contained the following words:— "Our eldest brother M has built houses and is building new houses on property appertaining to his share.....To the same we three persons and our heirs and representatives have no interest of any kind whatever. If we or they should prefer any claim, then the same is to be null. This release paper we have duly passed in writing jointly and severally and in sound mind." It was held that this document was an acknowledgment that there had, in times past been a partition between the brothers who signed it and M, but it was not itself the instrument of partition (*a*). But, where two documents consisted of lists of the assets of two Hindu co-owners, K.R. and K.M, valued equally, and were signed by them, and one list was headed 'handed over to K.R. as his share,' and the other list, 'received by K.M. for his share according to his wish,' and further at the end of one list there was also a list of outstandings with the remark, 'excluding Rs. 41,124-6-5 which we have divided equally among us, the other above-mentioned eight items which amount to Rs. 3,765-5-0 must be divided equally among us after collecting them,' it was held by the High Court that the documents constituted a partition deed (*b*). Four undivided brothers made four lists of the outstandings due to the joint family. Each list was signed by three of the brothers and not by the fourth, who retained it. It was held that the four lists formed, when read together, an instrument of partition on the ground that each list formed the title of the brother retaining it against the other three brothers with regard to the property which came to his share when the partition was effected (*c*). On the other hand, a list in writing signed by a member of a joint family of certain decrees allotted to two other members of the family at a partition of the family properties and afterwards alluded to in an award by arbitrators obtained by all the members of the family as evidencing a final separation, was held not

(*a*) Sakharam Krishnaji *v.* Madan Krishnaji (1881), I.L.R. 5 Bom. 232

(*b*) Referred case, No. 137 of 1893 (unreported); Mad. B. P. No. 584, 20th Dec. 1893.

(*c*) Ganpat *v.* Supdu (1908), I.L.R. 32 Bom. 509.

to be an instrument of partition whereby co-owners of property divided or agreed to divide it in severalty (*a*).

Partition or release.

Documents executed by three out of seven brothers constituting an undivided Hindu family, whereby each executant acknowledged the receipt of certain property made over to him,—"a division of the family property having been effected"—and acknowledged himself liable for one-seventh of the family debts, were held instruments of partition (*b*). They will not amount to deeds of release, even though they should contain a clause to the effect that the executants had no further claim on the property. Again, where two persons, *purporting* to be co-owners of certain properties, executed two documents whereby they agreed *in that capacity* to divide them and gave up each his claims to the properties taken by the other, the documents, though styled releases, were held to be really instruments of partition (*c*). One of three undivided brothers agreed to take from the eldest brother, the manager of the family, as his share in the family property, moveable and immoveable, certain cash and bonds for debts due to the family, and passed to the eldest brother a document in the form of a release. Subsequently another brother passed to the eldest brother a document in the form of a release whereby they divided the remaining family property by the latter handing over to the former securities for money of certain value. It was held that both the documents were instruments of partition, and not releases, the effect of the first document being to divide the property of the three brothers between one of the brothers on the one hand and the eldest brother and the other brother on the other hand, and the second document being one whereby the remaining co-owners divided their property in severalty (*d*). A document styled a release, executed by five persons in favor of M S., recited that there was no ancestral property and that

(*a*) Nilkanth *v.* Maruti, Bom. P. J. 1893, p. 208.

(*b*) Ref. (1891), I L. R. 15 Mad. 164.

(*c*) Ref. (1889), I. L. R., 12 Mad. 198.

(*d*) *In re* Govind Pandurang Kamat (1910), I. L. R 35 Bom. 75.

the property then possessed by the family was acquired in the name of the eldest member of the family from the profits in trade and the exertions of the executee, M. S., and that the executants accepted for their shares portions of the assets and liabilities and had no further claim upon M. S.; it was ruled that this was a partition deed coming within the decision in I. L. R., XII Mad. 198, as the executants were shown by the document to have been treated as co-owners by the acquirer (*a*). But, an instrument termed a deed of release, which purported to be executed by a Hindu son in favour of his father who was treated as representing the rest of his family and which set forth that, in consideration of certain lands allotted to the executant for life without power of alienation and of certain debts incurred by him being discharged by his father, he relinquished all claims on the rest of the family property, was held not an instrument of partition, since it was not a deed by which co-owners agreed to divide their property in severalty, but only a deed by which one co-owner renounced his claim for partition against the family property for a certain consideration (*b*).

An agreement in writing by the co-sharers in an undivided Hindu family to divide the family property according to the terms of an award passed by arbitrators is an agreement to divide the property in severalty (*c*). Where two Hindu brothers executed an instrument, whereby, after reciting that they had remained joint and undivided up to a certain date and that portions of their properties had been partitioned between them they provided for the partition of the remaining properties by arbitrators, the agreement was held to be in effect a deed of partition (*d*).

Final Order of Revenue-authority.—The words "final order" here mean not the order authorising a partition to proceed but the order passed after partition has been made declaring the

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(*a*) Mad. B. P. No. 571, 13th Dec. 1893.

(*b*) Ref. (1894), I.L.R. 18 Mad. 283

(*c*) *In re* Vasanji Haribhai (1891), I.L.R. 15 Bom. 677.

(*d*) Tej Protap Singh *v.* Champa Kalee Koer (1885), I.L.R. 12 Cal. 96.

various allotments of land (*a*). In this case, Stuart, C. J., observed :—

" It is scarcely correct to describe an instrument of partition as the final order for effecting the partition passed by any Revenue-authority. There must be, in the first place the recorded act of partition or division by the co-owners or their agreement or contract to make it, and the final order which follows is simply the fact of the Revenue-authority sanctioning the partition, by means of which the partition becomes a complete act, and there can, of course, be no effectual partition until this is done."

Per Spankie, J. :—

" The final order for effecting a partition passed by any Revenue-authority appears to be that which would be made under S. 13, Act XIX of 1873 (N. W. P. Land Revenue Act). '

Per Pearson, J. :—

"The first question proposed for our consideration is, whether the order passed by a Revenue Court authorising a partition to proceed, or the order passed after the partition has been made, declaring the various allotments of land, is the ' final order ' for effecting a partition. An order authorising a partition to proceed is, in some sense, an order for effecting a partition ; but the order which declares the various allotments of the land is, in my opinion, the ' final order ' which effects the partition (*b*)."

Mr. Cockerill, the mover of the Stamp Bill of 1877, observed that the word " final " pointed to the stage at which the duty was to be paid (*c*).

Final order of a Civil Court.—The meaning of the words " final order " when applied to an order passed by a Civil Court " for effecting a partition " is not free from difficulty. Conflicting decisions have been passed by the Courts on the question which proceeding of the Court is to be stamped as an instrument of partition. The High Courts of Bombay and Calcutta have held that the final decree for partition passed on a commissioner's report allotting particular properties to the sharers must be regarded as the instrument of partition (*d*). On the other hand, one learned Judge of the Madras High Court has held that the phrase "final order" cannot be read as meaning the final decree, but that it must apply to some order of the Civil Court in

(*a*) Ref. (1880), I.L.R., 2 All. 664. (*b*) Ibid.

(*c*) Abstract of the Proceedings of the Legislative Council, dated 15th January 1879.

(*d*) Jotindra Mohan Tagore *v.* Bejoy Chand Mahatap (1904), I.L.R. 32 Cal. 483 ; Balaram *v.* Ramkrishna (1905), I.L.R. 29 Bom. 366.

execution (*a*). But another learned Judge held in another case that the final decree for partition is the instrument of partition following the above decisions of the Calcutta and Bombay High Courts and not following the above Madras decision.(*b*) The Allahabad High Court has, however, held that the words "final order" refer to the final order of the lowest Court of original jurisdiction empowered *to give an order for effecting a partition* at the time it is passed.(*c*) This decision follows the language of the Board of Revenue who made the reference, and it is not clear whether the High Court meant by 'final order.' the preliminary decree or the final decree of the lowest Court of original jurisdiction.

Where the final decree in a partition suit was to be drawn on the report of the commissioner and the plaintiff was directed by the Court to pay a non-judicial stamp of the value of Rs. 100-0-0 in order that the decree might be drawn up thereon, he by mistake filed a court-fee stamp of that value and the final decree was engrossed on the stamp paper filed. One of the defendants appealed against the decree to the High Court and while the appeal was pending, the plaintiff applied for execution of the decree, but on objection by the defendant-appellant the Lower Court refused execution on the ground that there was no valid decree in existence capable of execution. On application to the High Court by the plaintiff-respondent, the High Court, holding that it could do so in the exercise of the inherent powers vested in it by s. 151, C. P. C., directed the plaintiff-petitioner to file a non-judicial stamp of the value of Rs. 100-0-0 to be attached to the decree already drawn up, in order to validate the decree with retrospective effect from the date when it was drawn up (*d*). The High Court also held that it could not order the refund by the Revenue-authorities of the value of the Court-fee stamp erroneously used, either under s. 52 of the Stamp Act or under the

(*a*) Per Wallis, J, Seshachalam Pillai *v.* Alwar Chetty, [1911] 2 M.W.N. 515.

(*b*) Per Bakewell, J, Thiruvengadathamiah *v.* Mungiah (1911), I.L.R 35 Mad. 26.

(*c*) Ref. (1914), I.L.R. 36 All. 137.

(*d*) Shaikh Rafiuddin *v.* Latif Ahmad (1910), 14 C. W. N. 1101.

Court-fees Act, while observing that the Revenue-authorities might afford relief to the petitioner on a proper application being made for their consideration.

In the above first cited Calcutta case, (*a*) the point did not arise directly for decision, but only incidentally on the question whether a suit for partition was pending after judgment was pronounced and therefore whether an order directing a party to be added could be made after judgment and before the final decree was drawn. In the above cases, it seems to have been assumed that the word "order" in the phrase "final order" means a decree of the Civil Court. The Legislature must be presumed to have known the distinction between "decree" and "order" and could not have intended to convey the meaning of the 'decree' of a Civil Court, by using the word "order." Further, the words "for effecting a partition" cannot appropriately apply to a final decree. It is true that the mere determination of the shares of the joint proprietors by a preliminary decree for partition does not amount to partition of the property, although such determination may effect a separation and division in right and interest in the joint estate (*b*). To effect a partition, however, the property, if susceptible of division, must be transformed into estates in severalty and one of such estates assigned to each of the former occupants for his sole use and as his sole property (*c*). This is the effect of a final decree passed on the report of the Commissioner. It is doubtful whether the word "final" in the phrase "final order for effecting a partition" applies to the partition adjudicated in the final decree and not to the partition actually made in execution by way of delivery of the separate shares. Mr. Cockerill, mover of the Stamp Bill of 1877, observed that the word "final" pointed to the stage at which the duty was to be paid (*d*).

(*a*) Jotindra Mohan Tagore *v.* Bejoychand Makatap, p. 78, above.

(*b*) Joy Narain Giri *v.* Girish Chunder Myti (1878), I.L.R. 4 Cal. 434; Chidambaram Chettiar *v.* Gouri Nachiar (1879), I.L.R. 2 Mad. 89; *Cf.* Tej Pratap Singh *v.* Champa Kalee Koer (1885), I.L.R. 12 Cal. 96, at pp. 102-3.

(*c*) Jogendra Nath Rai *v.* Baldeo Das (1907), I.L.R. 35 Cal. 961; Thiruvengadathamiah *v.* Mungiah, cited at p. 74, above.

(*d*) Abstract of the Proceedings of the Legislative Council, dated 15th January 1879.

If the words "final order" should be taken to mean the final decree, then as held in the above Calcutta case (*a*), the final decree cannot be drawn until the stamp duty has been paid, as there is no provision for compelling the parties to pay the stamp duty, and the suit cannot be said to have terminated until the Judge signs the decree upon the stamp paper as required by the Stamp Act. The result would be that the suit will be kept indefinitely pending so long as the parties do not pay the stamp duty, which could hardly have been intended by the Legislature.

Again, if it is the final decree of the Court of the lowest jurisdiction that has to be stamped as the instrument of partition, such decree may in appeal be reversed and the plaintiff's suit dismissed on the ground that he is not entitled to a share or be modified by increasing or decreasing the shares awarded by the lower Court. In the one case, is the party entitled to a refund of the stamp-duty he paid? In the other case, is the fresh final decree of the lower Court to be engrosed upon a stamp paper of the full value, or on a stamp paper representing the difference between the stamp paid originally in the lower Court and that which would be payable according to the fresh final decree, as the case may be? In any event, whether the decree is confirmed or modified, the decree of the Court of first instance having been superseded by the appellate decree, (*b*) fresh stamp will have to be paid for the decree to be drawn. There is no provision for a refund of the duty orginally paid or for levying the excess duty, if that is possible (*c*). In the absence of any such provision it would be contrary to the intention of the Legislature to levy stamp duty twice, the object of this provision making the final order of the Civil Court chargeable with duty being apparently to prevent the parties from evading the stamp-duty in view of the decisions of the Calcutta High Court that a

(*a*) Jotindra Mohan Tagore *v* Bejoy Chand Mahatap, p. 78, above

(*b*) Muhammed Sulaiman Khan *v.* Muhammad Yar Khan (1888), I. L. R. 11 All. 267; Pichuvayyangar *v.* Seshayyangar (1892), In. L. R. 18 Mad. 214.

(*c*) In the Reference made by the Board of Revenue in 86 All. 137, they only observe, "the plaintiff will *apparently* be entitled to a refund of the stamp-duty he has paid or a refund of the proportionate share of that duty."

suit brought by a co-sharer in joint possession for the partition of joint property would require to be stamped with a court-fee of Rs. 10 only, and not upon the value of the share claimed. The construction of the words " final order for effecting a partition passed by. . . . a Civil Court " in the sense of a final order in execution, that is, an order for the delivery of the shares, leads to fewer anamolies than those pointed out above.

None of the above decisions makes any reference to the provisions of s 29 (g) of the Act, which enacts that in the case of an instrument of partition the expense of providing the proper stamp shall be borne, when the partition is *made in execution* of an order passed by a Civil Court, in such proportion as such Court directs. This section read with the above definition in s. 2 (15) appears to point to the stage at which the duty ought to be levied, that is, when the parties apply for actual partition. In a Madras case where a suit was brought by the plaintiff for partition, the lower Court awarded shares to the several parties to the suit. One of the defendants applied in execution for delivery of his share. The Court passed an order calling upon him to pay court-fee on the value of his share, as the plaintiff paid court-fee on the value of his share only. On appeal, the High Court (Bhashyam Aiyangar and Moore, JJ.) delivered the following judgment:—

The order of the Acting District Judge must be set aside as he had no power to pass such an order. The present Acting District Judge should take the application for execution on his file and proceed to dispose of it. His attention is drawn to the provisions of s. 2, clause 15 and section 29 (g) of the Indian Stamp Act of 1899 and Article 45 of the 1st Schedule appended to that Act." (*a*)

(*a*) *Tiruvikrama Narayana Pattar* v. *Venganat Swarupattil Vasudeva Ravi Varma*, C. M. A. No. 6 of 1901 This decision has been communicated by the High Court to the subordinate Courts for their guidance at the instance of the Government of Madras; *see* Mad. G. O. No. 1221, *Judicial*, dated 25th Aug. 1903, embodied in Mad. B P. (Sep. Rev.) No. 226/2149-R , Mis., 26th Sep. 1903. *See* also M. H. C. Progs., Refce. on C. N 2107, dated 9th October 1901, embodied in Mad. G O. No 1796, *Judicial*, dated 14th November 1901, in which the High Court ruled that the Collector of a certain district might be furnished with the copy of a decree for partition passed by the High Court on which stamp duty had not been levied under this Act.

This decision favors the view that stamp-duty may be levied in execution.

Award.—The last part of the sub-section, "and an award by an arbitrator directing a partition" has been added probably because it was thought that parties to a partition, instead of executing a duly stamped deed, occasionally evaded the stamp law by getting a third person to make an award and registering it as such (*a*). Where an award was made by arbitrators directing the partition of property, the parties interested signing it by way of assent, it was held to be a deed of partition under Act I of 1879 (*b*); but the Chief Court of the Punjab held that under that Act an award of arbitrators directing a partition of property was not included in the definition of the instrument of partition, and that the mere fact that the parties had signed an award did not necessarily constitute it a deed of partition.(*c*) It is not necessary that the award should be attested by the parties interested in order to fall within the persent definition. The above additional provision is an extension of the above decision of the Bombay High Court. *See* notes under Art. 15, Sch. I, below.

Where the son and the grandsons by a predeceased son of a testator referred their disputes to arbitrators who were not to divide the property but to make an award, and the award made by them began by saying, "We decide as below. The parties should act accordingly", and it went on, "T. should take into his possession as below after passing a legal release," and added other directions with regard to the action of T. and provided, "In connection with whatever is settled to be given to T. and to be taken by him, we direct that T. should take into his possession the properties and receive and pay money stated above after passing a release on sufficient stamp and getting it registered to his nephew.....," it was held that the award came within the meaning of the words "an award by an arbitrator directing a partition" (*d*). With reference to the contention in

(*a*) See App E, p cccxxx.
(*b*) Amarsi *v.* Dayal (1884), I. L. R. 9 Bom 50
(*c*) Sukh Dial *v.* Mani Ram, 29 P. R. 1915.
(*d*) Kalidas *v.* Tribhuvandas (1906), I. L. R. 31 Bom. 68.

this case that this sub-section was not intended to include documents effecting as well as those directing a partition and that the award in question was not an award directing a partition hereafter but that the partition was made by the award itself, Beaman, J., observed:—

"The terms of section 2, clause 15, provide for all the cases, for parties having divided or agreed to divide, for arbitrators, to whom reference has been made, directing a partition, and last for the courts effecting a partition. It lies with the parties themselves to agree to make or actually to make a partition. But it is not competent to arbitrators to do more than direct a partition. It is the same for all practical purposes, whether they merely direct a partition to be made, or go further and define the manner in which to the best of their judgment it should be made, nor in the latter case does it seem to me to matter in the least, whether after having carefully set forth the precise way in which they think the parties should make the partition, they do or do not add a further direction to them to make it so The latter would in no case have any legal effect *per se*."

See notes under section 29 and Art. 45, "Instrument of Partition," Sched. I.

"lease" (16) "lease" means a lease of immoveable property, and includes also—

(*a*) a patta;

(*b*) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immoveable property;

(*c*) any instrument by which tolls of any description are let;

(*d*) any writing on an application for a lease intended to signify that the application is granted.

Cf. Act I of 1879, S. 3 (12).

A 'lease of immoveable property' is defined in the Transfer of Property Act, IV of 1882, s. 105, thus :—

"A lease of immoveable property is a transfer of a right to enjoy such property made for a certain time, expressed or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value to be rendered periodically, or on specified occasions to the transferor by the transferee, who accepts the transfer, on such terms."

For determining what is "immoveable property" for the purposes of the Stamp Act, reference is to be made to the definition of 'immoveable property' given in General Clauses Act, X of 1897, in the absence of one in the Stamp Act itself, and not to the definition of the term in the Transfer of Property Act (*a*). "Immoveable property" is interpreted in the General Clauses Act to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth (*b*). As 'immoveable property' includes benefits to arise out of land, an engagement by a subordinate proprietor of land to pay to a superior a sum of money in consideration of a grant of the right to farm dues, in the nature of revenue, which are profits arising out of land, is a lease (*c*).

Clause (a).—"Patta" is a deed of lease, a document given by the collector to the zamindar or by some other receiver of revenue to the cultivator or under-tenant, specifying the conditions on which the lands are held and the value or proportion of the produce to be paid to the authority or person from whom the lands are held. The term is laxly applied to a variety of deeds securing rights on property in land. It is also applied in the south of India to a title or appointment of office (*d*). Act VIII of 1865 (Madras Rent Recovery Act) defines pattas to be engagements of landlords and muchilikas to be those of tenants. "An 'ijara' may mean a lease of lands, but it is more frequently used as a lease or farm of land revenue, rent, or other

(*a*) General Clauses Act, X of 1897, s. 3, para 1; cf. Gopal Chander Biswas *v.* Ram Jan Sardar (1869), 5 B. L. R., 194.

(*b*) General Clauses Act, X of 1897, s. 3 (25).

(*c*) Collector of Tanjore *v.* Ramasamier (1881), I. L. R. 3 Mad. 342.

(*d*) Wilson's Glossary of Judicial & Revenue terms

proprietary rights, as distinguished from a patta or a lease of land for cultivation" (*a*).

Clause (b).—This clause corresponds to the definition of 'lease" given in the Registration Act, except that a counterpart of a lease and an agreement to lease are excluded from clause (b), but are included in the definition given in the Registration Act The decisions under the Registration Act may be consulted for determining whether an instrument falls under the clause In the Stamp Act XVIII of 1869, "lease' was defined to include every instrument, not being a counterpart, by which a person lets or agrees to let or takes or agrees to take immoveable property to or from another. But the definition of the term was enlarged in Act I of 1879 and was the same as the present definition. The counter-part of a lease is provided for by Article 25 of Schedule I.

The expression "undertaking to cultivate, occupy..." in this clause means, an accepted undertaking giving to the lessee a right or interest in the thing let, and not an undertaking to take up the land if the owner should at some future time desire it (*b*). An agreement to pay rent for enjoying forest produce is an undertaking to pay rent for immoveable property, as trees for the produce of which rent is agreed to be paid are immoveable property under the General Clauses Act (*c*).

Clause (c).—"Toll" means, any tax paid for some liberty or privilege, such as passage over a bridge or ferry, or along a highway or for selling in a market or fair, or the like (*d*). As a ferry is a place where tolls are collected, the lease of a ferry comes within this clause (*e*); so does a contract of tolls levied at Local Fund toll-gates (*f*). An instrument by which a Collector grants to an abkari contractor the monopoly of manufacturing and selling spirits or liquors for a term, is not a lease, as the

(*a*) Collector of Tanjore *v.* Ramasamier, I. L. R. 3 Mad. at p 344.

(*b*) Apu Budgavda *v.* Narhari Annajee (1878), I. L R 3 Bom. 21

(*c*) Mad B. P. No. 3484, 15th Nov. 1883.

(*d*) Webster's Dictionary.

(*e*) Mad B. P. No. 2501, 28th August 1885.

(*f*) Mad. B. P. No. 512, 16th April 1880,

term " lease" applies only to immoveable property (*a*) ; nor is the sum paid by the latter for the monopoly of selling liquors a tax within this clause (*b*). An instrument whereby the executant agreed to take for a certain term a pasture ground and to pay Rs. 1-10-0 per head of cattle grazed on such ground, was held not to be a lease but an agreement, on the ground that possession of property was not parted with, nor was it an undertaking to cultivate or occupy or pay rent for the land or grass ; but Nanabhai Haridas, J, was of opinion that it was a lease and even if not so, it was an agreement for or relating to the sale of goods (*c*).

Clause (d)—An instrument embodying a tenant's application for a lease on specified terms is not a lease (*d*), but such an instrument on which the landlord signifies his acceptance of the terms by writing the word " granted " in the margin is a lease (*e*) Where, however, the documents in question were douls or ordinary village papers and did not contain the terms for which the lands were said to have been granted and were not signed by the parties, it was held that they were not leases (*f*). This clause applies to a case where the order or writing on the application takes the place of a formal lease or patta, and therefore an order made on an application for darkast or waste lands does not fall within this clause, as the order merely authorises the issue of patta for such land (*g*)

See notes under Ss. 2 (17), 5 and 6, and under " lease," Art 35, Sched. I, *infra*.

" marketable security "

(16A) " marketable security " means a security of such a description as to be capable of being sold in any stock market in British India or in the United Kingdom.

(*a*) Ref. (1880), I. L R. 2 All. 651, at p. 658
(*b*) Mad. B. P. No. 772, 27th May 1880.
(*c*) *In re* Hormarji Irani (1888), I L. R. 13 Bom 87.
(*d*) Choonee Mundur *v* Chandu Lall Das (1870), 14 W R. 178.
(*e*) Syed Sufdar Reza *v* Amzad Ali (1881) I. L. R. 7 Cal. 703, at p. 707.
(*f*) Maharaja Luchmissur Singh *v* Mussamat Dakho (1881), I. L R. 7 Cal., at p 709 ; Laljha *v* Negroo (1881), I L. R 7 Cal. 717
(*g*) Mad. B P No 1903, 30th June 1879

Cf. 54 and 55 Vic c 39, S. 122 (1).

This sub-section was inserted by section 2 of the Indian Stamp Act Amendment Act, XV of 1904, and the definition is on the lines of that contained in section 122 of the English Stamp Act, 1891. This definition was required by the insertion of the new section 23A.

The expression "marketable security" was explained by Lord Shand in *Texas Land and Cattle Co.* v. *Commissioners of Inland Revenue* (*a*) as meaning "securities of such a description as to be capable, according to the usage and practice of stock markets, of being there sold and bought" (*b*)

A security of a kind that can be described as marketable does not involve hypothecation of property as security for the debt for which it is issued (*c*).

Bonds of a foreign company payable to bearer were executed by the company abroad and delivered abroad to a foreign trustee for the bondholders. The bonds were expressed not to be valid for any purpose unless authenticated by the certificate of the trustee Some of the bonds were sent to England and the trustee, having come to England, there certified them and delivered them to the persons entitled to them. It was held that since the bonds bore the statement that they were not valid for any purpose unless certified, they were not marketable securities till they were certified and that they became by the addition of the certificate marketable securities (*d*)

A foreign Government issued a series of instruments, described as "Gold coupon treasury notes," each of which contained a promise to pay the amount of the note in gold to the bearer at a certain date two years from the date of issue; attached to each note were coupons for the payment of the interest in gold, the interest being payable abroad, or at the

(*a*) 16 Court Sess. Case, 4th Series, 69; 26 S. C. L. R. 10.

(*b*) This definition was adopted by Lord Esher, M.R., in Brown, Shipley and Co. *v.* Commissioners of Inland Revenue, [1895] 2 Q. B. 598, at p. 601.

(*c*) Speyer Brothers *v.* In Rev. Commrs., [1907] 1 K. B. 246, at pp. 253-4.

(*d*) Lord Revelstoke *v.* Commr. of In. Rev. [1898] A. C. 565, affirming Baring *v.* Commrs. of In. Rev. [1898] 1 Q. B. 78

option of the bearer in London The notes were redeemable at par at any time before maturity at the option of the issuing Government upon their giving sixty days ' notice of their intention to redeem ; they gave no security to the holder beyond the promise to pay the face amount of the notes ; and they were marketable, though not readily saleable, on the London Stock Exchange. It was held that the instruments were promissory notes within the meaning of s 33 of the Stamp Act of 1891, and that they were also securities within the meaning of s. 122, sub-section (1) of the Act, and chargeable with stamp duty at the rate applicable to such securities (*a*). In this case it was observed :—

"It is made by a foreign Government and has coupons attached to it. It is not necessarily a promise to pay a fixed definite sum ; the sum paid may vary, and the interest may also vary, by payment upon notice before maturity. These are not matters consistent with the ordinary notion of a promissory note, though the document is capable of falling within the statutory definition in the Stamp Act" (*b*).

"That definition involves an issue of fact. The question is not merely whether the security has in one case been so dealt with, but whether it is, in the fair sense of the word, a security of such a description as to be capable of being sold in any stock market in the United Kingdom In this case Walton, J., heard evidence upon that point and came to a conclusion upon it. It is not for us to differ from him " (*c*).

"The question, therefore, that arises in this case is whether this document, though capable of being classed as a promissory note, may not also be capable of coming under the head of "marketable security." In relation to that question evidence was given before the learned Judge that this instrument was of such a description as to be capable of being sold on the Stock Exchange and he found as a fact that it was. It appears that in arriving at that conclusion he did not consider that the mere fact that a security could be sold on the market was in itself conclusive evidence that it was a marketable security, but, while rejecting that larger view which would bring anything sold on the stock exchange into the category of "marketable security," he came to the conclusion in this particular case, and as to this particular instrument, that it was a marketable security (*d*).

(*a*) Speyer Brothers *v.* In. Rev. Commrs., [1907] 1 K. B. 246, reversing the decision of Walton, J. in [1906] 1 K. B. 318.

(*b*) *Ibid.* at pp. 252-3.

(*c*) Per Cozens-Hardy, L J., *Ibid*, at p. 256.

(*d*) Per Collins, M. R., *Ibid*, at p. 253.

An American railway company, as security for a temporary loan, handed through their agents in England to the lender an instrument which stated that for value received they promised to pay twelve months after date to the order of themselves the amount named in it. It also contained a statement that it was one of a series, and was secured by a deposit of gold bonds which (or a sufficient amount of their proceeds) were under an existing trust deed to be held in trust for the benefit of the holders of the instruments. The instruments which had been endorsed before issue, were dealt with in the London Stock Exchange, but were not officially quoted there. It was held that the instrument was not a mere promissory note, that it contained a contract that the holder should be entitled to the benefit of the security mentioned in it, that it was, therefore, a security for the money lent upon it and that it required to be stamped as a marketable security within the meaning of s. 82, sub-section, (b) and s. 122 of the Stamp Act, 1891 (*a*).

"mortgage-deed."

(17) "mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of, another, a right over *or in respect* of specified property.

Cf. Act I of 1879, s. 2 (13).

Definition.—Section 58 (a) Transfer of Property Act, IV of 1882. defines "mortgage" thus :—

"A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

"The transferor is called a mortgagor, the transferee, a mortgagee; the principal money and interest of which the payment is secured for the time being are called the mortgage money, and the instrument (if any) by which the transfer is effected is called a mortgage deed."

(*a*) Brown, Shipley & Co. *v.* Commrs. of In. Rev., [1895] 2 Q. B. 598, reversing the decision in [1895] 2 Q. B. 240.

"Mortgage" as defined in the present Act relates both to moveable and immoveable property, but the Transfer of Property Act limits it only to immoveable property, pledges of moveable property being provided for by the Indian Contract Act (*a*). The definition in the present Act also includes charges of immoveable property which are separately provided for in section 100 of the Transfer of Property Act. The decisions on the above sections of the Transfer of Property Act as to the nature of a mortgage or charge may be usefully consulted for the purposes of the Stamp Act also

Agreement to execute a mortgage:—A limited company, by deed in consideration of a certain sum then advanced to them by a building society, agreed to execute whenever called upon by the society, a mortgage or charge, in such form as the society should request, of all the company's interest in certain hereditaments to secure the repayment of the sum advanced with interest. A receiver was appointed by the deed to receive the rents and profits so long as any money remained due to the society; but there was a provision that he was not to enter into possession of such rents and profits until default should be made in payment of the principal and interest. It was held by Wills, J., that the instrument fell under the description both of "mortgage" and of "covenant" for the purposes of the Stamp Act of 1891; but Bruce, J., rested his decision on the single point that the instrument was chargeable as a covenant being a security for the re-payment of money (*b*). In this case Wills, J., observed:—"The introduction into an instrument of a provision that a demand or request shall be one of the preliminaries to the obligation to execute a deed, does not determine the question whether an instrument creates a present charge or not. If an intention to give present charge can be collected from the instrument, the introduction of such a provision does not make it the less a present charge; it is only part of the machinery by which the obligation which effects that charge shall be carried out. If, on the other hand, no intention to constitute a

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(*a*) Indian Contract Act, ss. 172-179.

(*b*) United Realization Co. *v.* In. Rev. Commrs, [1899] 1 Q. B. 361.

present charge can be collected from the instrument itself, then the introduction of words requiring that there must be a demand or request to execute a deed is material, because, until the demand has been made upon which alone the obligation to create anything, or the fact of the creation of anything, in the nature of a charge must depend, the condition upon which a charge comes in existence is not satisfied " (*a*).

In execution of a money decree, certain property of the judgment-debtors was attached and advertised for sale. The judgment-debtors filed a petition in Court to the effect that they had obtained from the decree-holder time to satisfy the decree, that they agreed if they failed to pay the amount at the appointed time that the decretal amount with interest should be recovered from the attached property, that they hypothecated as security certain lands specified, that the decree-holder was entitled to take possession of the said lands by virtue of the said petition, if they failed to satisfy the amount at the stipulated time, and that if the security should be deteriorated in value within the stipulated time, the decree-holder might recover the whole amount of the security by executing his decree ; that they asked the Court that the auction sale be postponed in accordance with their petition and that the case be struck off. At the foot of the petition the following words appeared in the writing of the decree-holder; " Time allowed " to which he affixed his signature. It was held by Straight, Brodhurst and Tyrrell, JJ. (Stuart, C. J. and Oldfield, J., dissenting) that this petition (of compromise) by its terms purported to create a contingent possessory lien on the property of the judgment-debtor and was thus a deed of conditional transfer by way of mortgage and not an agreement (*b*).

A document whereby A company agreed that on the execution of it, they would issue and hand to the B company £8000, part of the £25000 second debentures, and that such second debentures, together with the £20000 first debentures already issued to the B company, and the remaining £5000 first debentures, subject to the prior charges thereon, should be held by the

(*a*) [1899] 1 Q. B., at pp. 365-366.

(*b*) Rup Chand *v.* Thakur Dial, (1883) All. W. N. 93.

B company as security for a sum of £32000 and odd, was held to be a mortgage-deed liable to be stamped as a mortgage-deed with possession as the document was not a mere agreement to transfer, but an agreement to hand over the debentures on the execution of the document and was therefore in effect an actual transfer (*a*)

Specified property.—In order that an instrument should operate as a mortgage no special form of words is required (*b*), but it must appear that a right over specified property is transferred or created. The word "specific" instead of "specified" occurs in the definition of mortgage in the Transfer of Property Act. "Specified" would mean, specified or mentioned in the document (*c*), and "specific" means, certain or definite. But in a case where an agreement was made between certain persons to transfer the future surplus profits of their respective trades to a trustee in order that the trustee should hold the fund so to be created on certain trusts declared in the agreement, it was held that the fund intended to be created under the agreement was not "specified property" (*d*) It would appear from this case that no distinction between 'specific' and 'specified' is observed. An instrument recited that O in order that certain creditors of the firm of which her husband was the sole proprietor (whose executrix she was) might be repaid their debts, had entered into an agreement with the Bank of Madras by which the Bank agreed to advance to O a certain amount on a promissory note to be executed by one B in favour of the firm and to be endorsed by the latter to the Bank upon the said O executing a declaration of trust of the machinery, plant, etc, connected with the business In consideration of the advance to be made by the Bank, O declared that she held the machinery, plant, etc, on trust for and on behalf of the Bank. After a provision as regards interest, full power was

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(*a*) Ref. (1899), I.L.R, 23 Mad. 207.

(*b*) Rajkumar Ram Gopal Narayan Sing *v.* Ramdutt Chowdhry (1870), 5 B.L.R. 264.

(*c*) Cf. Mussummat Durga Chowdhrain *v.* Jewahir Singh Chowdhri (1890), 17 I. A. 122, at p. 124; s. c. I L.R, 18 Cal. 23.

(*d*) Ref. (1887), I.L.R. 11 Mad. 216.

given to the trustee to use and employ the trust property and to replace sold portions, etc The substituted goods were to be included in the security Finally there was a declaration that the trustee stood possessed of the net profits realised after payment of all expenses including a sum not exceeding Rs. 20,000 to be retained by the trustee annually in trust to pay and apply the same in payment of sums advanced by the Bank. It was held that, though the net profits were not specified property within the meaning of the definition, so far as the stock in trade which were described in the deed as trust-property were concerned, trust-property was specified, and that the object of the instrument being to give the Bank some rights by way of security, it was a mortgage and not merely a declaration of trust (*a*). For what is specific property, see notes under section 58, Shephard and Brown's Transfer of Property Act.

A mere covenant by a debtor not to alienate his property until the debt secured by a bond be satisfied, without further words showing an intention to create a right over specified property does not constitute a mortgage (*b*). A mere memorandum of a mortgage transaction made by a mortgagee in his account-book in the presence of witnesses, and not purporting to have been written at the instance or under the authority of the alleged mortgagors is not a "mortgage-deed," nor does it come under any of the class of instruments chargeable with duty under the Stamp Act (*c*) Entries made in a register of loans or account-book kept by a creditor, showing the description or list of the articles pledged, amount lent and rate of interest, signature of the debtor in acknowledgment of the debt, signature of the witnesses, &c., were held to be not merely acknowledgments of debt but mortgages (*d*), and would now fall under Art 6.

An assignment of property not in existence at the date of transfer does not become void for uncertainty, if the subject-matter of assignment could be identified at the time when the

(*a*) Ref (1913), 25 M. L. J. 613

(*b*) Daupal *v.* Jag Ram (1879), I.L.R. 2 All. 449; Najibulla *v.* Nusir Mistri (1881), I.L.R. 7 Cal. 196.

(*c*) Empress *v.* Maya Mal, 31 P. R 1883 (Cr).

(*d*) Mad. B. P. No. 2194, 8th October 1881; Letter No. 5010/261, 4th October 1887, from Commissioner to Superintendent of Stamps, C. P.

Court is asked to enforce the assignment (*a*). An instrument assigning some indigo to be manufactured in the season (*i. e.*, property not in existence at the date of assignment) was held not to be a mortgage under the Stamp Act XVIII of 1869, on the ground that "property" was defined in that Act to be "property *being* in British India at the time the instrument is executed" (*b*). Since this definition of "property" has been omitted in the subsequent Acts, such an instrument would be a mortgage under them.

Mortgage or lease:—Where a Zamindar leased certain land in a village to some cultivators at a rent of Rs. 365 per annum in cash and of certain cart-loads of straw and grass by a document which also contained an agreement by the lessees by which they hypothecated certain other property belonging to them for the purpose of securing the payment of the agreed rent for the performance of the engagement for the delivery of the other articles, it was held that the instrument was also a mortgage deed, besides being a lease; as it was an instrument by which, for the purpose of securing a future debt, that is, the rent to be paid, and for securing the performance of an engagement to pay the rent and to deliver the other articles yearly, the lessees created in favour of the lessor a right over specified property (*c*).

A document purporting to be a deed of mortgage with possession whereby the executant, being indebted to the extent of Rs. 899—12—0 made over certain lands to his creditor for nine years in liquidation of the principal and interest giving him permission to enjoy the produce of the lands—the profits and losses arising therefrom being entirely his—and which stipulated for a payment to the executant of Rs 35 per annum, was held not to be a mortgage, as the debt was satisfied and not secured when possession was given, but to be a lease in consideration of the premium of Rs. 899—12—0 and of an annual reserved rent

(*a*) Tailby *v.* Official Receiver (1888), 13 App. cases, 523; *In re* Finn Kelcey Tyson *v.* Kelcey (1899), 81, L T., 354.

(*b*) Moran *v.* Mitun Bibee (1876), I.L.R. 2 Cal. 58

(*c*) Ref. (1894), 17 All 55; Mad. B. P. No. 243, 7th June 1895, superseding Mad. B. P. No. 2389, 19th August 1885.

of Rs. 35 (*a*). But in a later case, an instrument, therein described as a lease executed in consideration of a sum of Rs. 120, which provided that the party paying that sum should remain in possession of certain land for thirteen years, but contained no provision for repayment of that sum or for the payment of rent was held to be a usufructuary mortgage and not a lease (*b*)

Debt—Money advanced :—Where by the terms of an agreement, a pending suit was compromised, and payment of an ascertained balance found due by plaintiff was secured by the creditors being placed in possession of the plaintiff's lands for certain years with the right of enjoying the rents and profits thereof, it was held that the agreement was a mortgage (*c*). Similarly, where a compromise was entered into between the parties to a decree and the claimants to the property attached in execution of that decree, whereby the claimants agreed to pay the amount of the decree within a certain time and hypothecated such property as security for the payment of the amount and the compromise was filed in Court, it was held in a suit brought to recover the amount that the instrument was a mortgage deed (*d*). An instrument reciting the deposit of Government promissory notes with the Salt Commissioner as security for the payment of salt duty would now be chargeable with a duty of eight annas under s. 23 A (*e*).

Where the effect of a deed was to secure the liquidation of a debt by allowing occupation of land free of rent, it was held that the deed was a mortgage (*f*). Similarly, a document whereby the executant gave possession of his land to his creditor to secure his debt and to have the debt discharged out of the rents and profits, agreeing to pay the assessment himself, was

(*a*) Reference 1883, I. L. R. 7 Mad. 208.

(*b*) Reference 1897, I. L. R. 21 Mad. 358 ; Mad. B. P. No. 502, 24th November 1897.

(*c*) Mashook *v.* Marem Reddy (1874), 8 Mad. H. C. R. 81.

(*d*) Surju Prasad *v.* Bhawani Sahai (1879), I. L. R 2 All. 461.

(*e*) Mad. B. P. No. 3594, Salt, 13th Nov. 1908, superseding Mad. B. P. No. 371, 4th Feb. 1884.

(*f*) Mad. B. P. No. 2356, 21st August 1878; Mad. B. P. No. 288, 17th Feb. 1881.

held to be a mortgage (*a*). So, where a person making an advance was put in the receipt of the rents and profits of land by way of payment of interest on the loan, this was held to be in the nature of a mortgage transaction (*b*). A document whereby the executant directed one of his creditors to assume the special management of one of his lands and to appropriate the income therefrom after deducting certain expenses in satisfaction of the interest due on a mortgage executed to him for Rs. 15,000, and of the interest due on a mortgage executed to another creditor for Rs. 60,000, was ruled not to be a declaration of trust but a mortgage with possession of land as security for the repayment of the interest due on Rs. 75,000, and to be chargeable with duty calculated under section 25 by ascertaining the interest (*c*).

Performance of an engagement.—An agreement entered into between the Secretary of State and a salt contractor in which it was recited that the contractor had deposited certain promissory notes to secure the fulfilment of the contract and that the promissory notes should be returned to the contractor on the due fulfilment of the contract was held to be a mortgage (*d*). When there has been a pledge of goods effected by delivery of them to the creditor, a document such as the above merely recording the fact and the terms on which the pledge has been made can hardly be treated as a mortgage. Such a document would now fall under s. 23 A and be chargeable with a duty of eight annas (*e*). An agreement executed by a forest contractor, stipulating to purchase certain wood, to cut down certain trees and pay for them at certain rates and depositing certain money as security for the performance of the contract was held to be a mortgage with possession (*f*), but it was subsequently ruled that such an agreement is exempt from duty, as it would fall within

(*a*) Nanabhai Satu *v.* Jotibin Biruji, Bom. P. J., 1884, p. 226; Cf. Venkateswara *v.* Keshava (1878), I. L. R. 2 Mad. 187; and Ruling of the Chief Commissioner, C P. Circ. No. 42 of 1893.

(*b*) Khooshal Rae *v.* Janakee Doss (1870), 2 N. W. H. C, R. 9.

(*c*) Mad. B. P. No 1060, 11th May 1886.

(*d*) Ref. (1887), I.L R 11 Mad 89.

(*e*) Mad. B. P. No 1680, Mis. 7th Dec. 1209.

(*f*) Mad. B. P. No. 680, 29th Feb. 1884.

No. 8 (c), Schedule II of India Government Notification No 5199, 1st November 1885 (a). An agreement for the purchase and removal of Government salt, Government promissory-notes being deposited for the fulfilment of the agreement, is now chargeable under s. 23 A. (b) An agreement containing a stipulation that a certain percentage on the value of the work done by a contractor should be withheld in order to cover compensation for default on the part of the contractor and as security for the performance of the whole contract is not a mortgage, but is chargeable only as an agreement (c) · So a muchilika executed by an abkari licensee agreeing to all the terms and conditions in the license, one of the conditions being that he should deposit a sum equal to three months' rental as security for the due performance of the contract was held to be an agreement and not a mortgage (d).

An instrument executed by the holder of a share in a chit fund on his receiving the amount of the lowest bid at a periodical auction, whereby he agreed to pay the instalments remaining due by him to the agent of the fund and to indemnify him on the security of certain property against any loss that might result by his failure to pay them, was held a mortgage and not an indemnity bond (e). A bond executed by the defendant in a suit under s. 179 of the Civ. P. Code of 1882, furnishing certain property as security for his appearance in Court was ruled by the Madras Board of Revenue to be a mortgage-deed and not a bail bond or other instrument of obligation provided for by Art. 6, Sch. II, Court Fees Act, VII of 1870, before the amendment of Art. 13, Sch. I. of the Stamp Act of 1879 by Act VI of 1889 (f). But since the amendment of Art. 13 by the addition of the words " or by the Court Fees Act, VII of 1870," such a bond would be liable only to a Court fee of eight annas

(a) Mad. B. P. No. 125, 23rd March 1896, Cf. I.G.N. 785, 17th Feb. 1899.

(b) Mad. B. P. No. 3594, Salt, 13th Nov. 1908, superseding Mad. B. P. No. 3100, 12th Nov. 1885.

(c) Ref. (1883), I. L. R. 7 Mad. 209.

(d) Ref. (1891), I. L. R. 15 Mad. 134.

(e) Mad. B. P. No. 399, 17th Sept. 1897.

(f) Mad. B. P. No. 530, 17th March 1887.

under Art. 6, Sch. II of that Act, as it clearly falls within that Article.

"Zur-i-peshgi leases" or leases granted on a sum of money being advanced, are on the same footing as pure usufructuary mortgages, and are dealt with as such; but this is only when there is a power of redemption reserved to the lessor either expressly or impliedly so that it distinctly appears that the parties themselves intended the transaction to be in the nature of a mortgage (*a*) In such leases there would generally be a condition that, if the advance be not repaid when the lease shall expire, the mortgagee shall be entitled to hold on until his claim is satisfied.

The stamp duty on a document is determined by its apparent tenor (*b*). Therefore questions whether a certain document is a conveyance, lease or mortgage, which may have to be considered for the purpose of determining the rights of parties hereto would seem to be unnecessary for the purposes of the Stamp Act (*c*).

See notes under Art. 13, 'Bond,' Art 40, 'Mortgage-Deed,' and Art 41, "Mortgage of a Crop,' Sched. I, *infra*.

"paper."

(18) "paper" includes vellum, parchment or any other material on which an instrument may be written:

Act I of 1879, S. 3 (14).

Instrument:—See s. 2 (14) above.

"Expressions referring to 'writing' shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form" (*d*).

(*a*) Macpherson on Mortgages, p. 12

(*b*) *See* p. 45, *ante*, and notes under section 35, below.

(*c*) Cf. Tirupathi Goundan *v.* Rama Reddi (1897), I. L. R. 21 Mad. 49 at p. 50.

(*d*) General Clauses Act, X of 1897, S. 3 (58).

"policy of insurance."

(19) "policy of insurance *includes*—

(*a*) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event;

(*b*) a life-policy, *and any policy insuring any person against accident or sickness, and any other personal insurance;*

(*c*) *Repealed by Act VI of 1906* (*a*).

Cf Act I of 1879, S. 3 (15)

'Insurance' is a contract by which one party, in consideration of a premium, engages to indemnify another against a contingent loss by making him a payment in compensation, if and when the event shall happen by which the loss is to accrue. 'Policy' is the name given to the instrument by which the contract of indemnity is effected between the parties. The party who takes the risk upon himself or undertakes to indemnify is called the assurer or insurer and the party protected against the risk is called the assured. In the case of marine insurances the insurers are called underwriters from their subscribing their names at the bottom of the contract (*b*).

Clause (b)—Life policies were chargeable under the Stamp Acts XXXVI of 1860 and X of 1862. They were exempted from duty by Act XVIII of 1869. But Act I of 1879 reverted to the law before the Act of 1869 and made them chargeable. The italicised words in this clause have been added so as to make it cover policies of every description (*c*). An instrument assuring

(*a*) This clause dealing with the renewal of a policy of fire insurance which was added to Act I of 1879 by Act I of 1888, S. 1, was repealed in consequence of the amendment of Art. 47 of the first Schedule.

(*b*) Steph. Comm. Vol. II, pp. 136—38.

(*c*) Statement of Objects and Reasons, App. E., p. i.

the owners of cattle from loss arising from their death is a policy of insurance (*a*)

Life Policy.—A life policy is not defined in the Act It usually engages that, in consideration of a single or periodical payment of premium, the insurer, generally a company, will pay on the death of some individual or on his death within a limited time as the case may be, a certain sum of money therein specified (*b*). "Policy of life insurance" is defined in the English Stamp Act to be a policy of insurance upon any life or lives or upon any event or contingency relating to or depending upon any life or lives except a policy of insurance against accident, and a policy of insurance is defined to include every writing whereby any contract of insurance is made and agreed to be made or is evidenced and the expression 'insurance' includes 'assurance.' (*c*) A contract of insurance was explained to be "a contract for the payment of a sum of money, or for some corresponding benefit, such as the re-building of a house or the repairing of a ship, to become due on the happening of an event which event must have some amount of uncertainty about it, and must be of a character more or less adverse to the interest of the person effecting the insurance.' (*d*) The contract of life insurance, more properly assurance, is not, like that of fire insurance or marine insurance a contract of indemnity, but is a contract by which the insurer undertakes to pay a given sum upon the happening of a particular event contingent upon the duration of human life in consideration of the immediate payment of a smaller sum—or certain equivalent periodical payments—by another (*e*). A contract in which a sum is provided to be payable either on the assured reaching a certain age or upon death, whichever first happens, is a contract of life-insurance and so also is a contract in which a larger sum is payable in the former event. Thus, where by an instrument it

(*a*) Attorney-General *v* Cleobury (1849), 4 Ex. 65 ; 18 L J., Ex. 395.

(*b*) Steph. Comm. Vol. II, p. 144.

(*c*) 54 & 55 Vic. c. 39, s. 98 ; *See* App. B. below.

(*d*) Per Channell, J., in Prudential Insurance Company *v*. In. Rev Commrs., [1904] 2 K. B. 658, at p 664.

(*e*) Ency. of the Laws of England, Vol. vii, p. 486.

was contracted that, in consideration of a weekly premium of 6*d*, a sum of £95 was to be paid to the assured on his attaining the age of sixty-five, or in the event of his dying under that age a sum of £30 was to be paid to his heirs, it was held that it was a policy of life-insurance and that the contract was like the one in which a sum was made payable either on the assured reaching a certain age or upon death and that in this case the fact of a larger sum being payable in the former event was not a material difference. (*a*). In this case the Court was inclined to hold also that even if the portion of the said contract relating to the payment of money to the assured on his attaining the age of sixty-five stood above, it would be a policy of insurance upon a contingency depending upon a life within s. 98 of the Stamp Act of 1891.

An entrance certificate granted under the rules of the Uncovenanted Service Family Pension Fund, by which document the person to whom it was issued, in consideration of a money payment, secured an income after his death for a time to another person, subject to certain contingencies, was held to be a life-policy within this clause (*b*). A certificate of membership of an association called the Madras Hindu Family Provident Society and of kindred associations popularly known as death funds was held chargeable with duty as a life-policy (*c*) Similarly, a certificate of membership of a Provident Society by which an amount was agreed to be paid under the rules of the society to a named person on the death of the holder thereof was held to be a life-policy chargeable under division D of Article 47, Sch. I (*d*).

Insurance against accident:—There is no definition in this Act of the expression "policy of insurance against accident" It is defined in the English Act of 1891, s 98,(*e*) to mean a policy of

(*a*) Prudential Insurance Company *v* In. Rev Commrs., [1904] 2 K. B. 658.

(*b*) Ref. (1892), I. L. R. 19 Cal. 499.

(*c*) Mad. B. P. Nos. 2856, 16th Aug. 1884; 1147, 13th April 1885; and 1776, 16th June 1885.

(*d*) *In re* Himat Provident Society (1900), 1 L R. 25 Bom 376.

(*e*) *Vide* Appendix B.

insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause, or as compensation for personal injury. So, where an insurance company by a policy granted to employers of labor agreed to pay for and on behalf of the employers such sums as they should become liable to pay under the Employers' Liability Act, 1880, the Workmen's Compensation Act, 1897, or by the common law, in respect of personal injury to any workman in their employ, it was held that the instrument was not "a policy of insurance against accident" within the meaning of s 98 of the Stamp Act of 1891 on the ground that the payment was not a payment agreed to be made upon the death of a person otherwise than from a natural cause or as compensation for personal injury, but was a payment agreed to be made as indemnity against claims for compensation for which the assured was answerable (*a*).

See notes under s 25, and Art. 47, "Policy of Insurance," Sched. I, *infra*.

"Policy of sea-insurance" or "sea-policy."

(20) "policy of sea-insurance" *or* "*sea-policy*"—

(*a*) means any insurance made upon any ship or vessel (*whether for marine or inland navigation*), or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in or relating to, any ship or vessel and

(*b*) includes any insurance of goods, merchandise or property for any transit which includes,

(*a*) Lancashire Insurance Co. *v.* In Rev. Comms., [1899] 1 Q. B. 353, 358

not only a sea risk *within the meaning of clause* (*a*), but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance :

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance :

Cf. Act I of 1879, S. 3 (15) as amended by Act VI of 1894.

[The clauses of this sub-section except the italicised words were added to s. 3 (15) of Act I of 1879 by s. 1 of Act VI of 1894.

As the language of the definition of ' policy of sea-insurance, introduced by Act VI of 1894 seemed to restrict insurances of ships or goods on ships to transit by sea, the italicised words in clause (a) were probably added to make it clear that the definition applies both to land and sea risks. ' Ship ' includes every description of vessel used in navigation not exclusively propelled by oars. ' Vessel ' includes any ship or boat or vessel or any other description of vessel used in navigation (*a*).

A document not being a mere ' slip ' or memorandum of a proposed insurance, and mentioning the sum for which the assurer declares the name of the ship, the voyage and the premium and providing for the losses being paid upon its production in conformity with certain conditions in the possession of the assurers and lastly, expressly guaranteeing payment of losses and claims settled under it, and which on the face

(*a*) General Clauses Act, X of 1897. s. 3 (51) and (56).

of it does not contemplate the necessity of any other document of a more formal character being passed to the assured, requires to be stamped as a policy (*a*)

See notes under s. 7 and Art. 47, "Policy of Insurance," Sched. I, *infra*.

"power-of-attorney."

(21) "power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act *for, and* in the *name* of the person executing it :

Cf. Act I of 1879, s. 3 (16).

[The words "in the stead of" in the last part of the definition of this term in Act I of 1879, have been changed into "for and in the name of" in this Act. "The definition of 'power-of-attorney' has been amended so as to make it clear that it relates only to powers-of-attorney and does not include all contracts creating the relationship of principal and agent." (*b*)

An instrument authorising a person to receive on behalf of another such sums as should become due in the course of the execution of a contract for certain work is not an assignment for money, but a power-of-attorney (*c*). Similarly, a document by which M authorised P to recover by suit or otherwise the amount due to M from W and to deduct therefrom the debt due to P and to return the surplus, was held to operate as a power-of-attorney and not as an assignment (*d*). A written authority in these terms,—"I hereby authorise you to endorse or cause to endorse my name on three bills of exchange in your possession, which said instruments, I hereby undertake, shall be binding upon me. And I further undertake to pay you the amount of the

(*a*) *In re* Marine Insurance Certificate (1894), I. L. R. 19 Bom. 130.

(*b*) Statement of Objects and Reasons, App. E, p. ccci.

(*c*) Bhagavandas Kishordas *v.* Abdul Husein Mahomed Ali (1878), I. L. R. 3 Bom., 49.

(*d*) Pestanji Mancherji Wadia *v.* Joseph Matchett (1870), 7 Bom, H. C. R., A C. 10.

said bills when they become due, if they be not duly honoured at maturity' —was held to be a power-of-attorney and not a mere agreement coupled with an authority (*a*)

A sannad authorising a person to collect rents and sue for them is a power-of-attorney (*b*). A document styled an agreement executed in favour of a person and reciting certain kind acts done by him to the executant and his promise to maintain her to her life's end, authorised him to recover a certain sum of money deposited with a bank and to conduct a suit pending in court and further ran in these terms: "You shall maintain me to my death and perform my funeral ceremonies. If you predecease me, your sons shall maintain me and take my property after my death. Only you have a claim on me and my property." It was held by the High Court that this document was an agreement and also a power-of-atorney (*c*). A written authority required by section 36, Madras Act II of 1864 (Revenue Recovery Act) should be stamped as a power-of-attorney. So, where a written document authorises a person to bid at a sale under Madras Act VIII of 1865 (now Act I of 1908) on behalf of another, it has to be stamped, but the officer conducting the sale, though not authorised to demand at all times the production of the authority, may, in the exercise of a sound discretion, sometimes have to call for such an authority (*d*)

Power-of-attorney distinguished from vakalatnama or muktiyarnama.

It is not necessary for a pleader who is authorised by a vakalatnama under which he acts to receive moneys or documents for his clients in the course of the cause which he is empowered to conduct, or as a consequence of the decree or any order of the Court in such cause, to have a general or a special

(*a*) Walker *v.* Remmett (1946), 15 L J C P 174; cf. Jonmenjoy Coondoo *v.* Watson (1884), I. L. R. 10 Cal. 901.

(*b*) Raghu Nandan Thakur *v* Ramcharan Kapali (1868), 1 B L R. 55 F. B.; S. C., 10 Suth., W. R., 89.

(*c*) Referred case No 7 of 1888, M. H. C.; Mad. B. P. No. 942, 10th Nov. 1888.

(*d*) Mad. G. O. No 5826, Rev., 11th Sep. 1889 and Mad. B. P. 795, 14th Nov. 1889; Mad G. O. 7075, Rev., 4th Nov. 1889; Mad. B. P. No. 522, 6th Aug. 1889.

power-of-attorney to enable him to receive such moneys or documents (*a*) Probably, with reference to this decision, the words "not chargeable with a fee under the law relating to court-fees for the time being in force" were first introduced in Act I of 1879. So, a document authorising a Vakil to present an application for copies to the Collector was held not to require to be stamped as a power-of-attorney but only with a court-fee stamp under Art. 10 (a), Schedule II of the Court Fees Act, VII of 1870, as the word "case' used in that Article need not necessarily mean a suit or judicial proceeding but will include any petition or application to a Court or officer, the Court observing, —"The Collector may perhaps consider that he ought not to give a copy The person holding the vakalatnama may have to conduct the *case* for his client before the Collector and satisfy him, if he can, that the party is entitled to the copy The matter is inquired into and the right of the party is investigated. Does not, therefore, the matter become a *case* ?' (*b*) A question arose in a later case whether this decision could be applied to a document which was given to one P by thirty-six ryots jointly interested in a certain sum of money ordered to be refunded to them, authorising him to appear before a certain officer and receive payment thereof The High Court held that this was a power-of-attorney and not a vakalatnama under Art 10 (a), Schedule II of the Court Fees Act, as the persons entitled to the refund would be required to do no more than appear in person or by a person duly authorised by them before the officer directed to refund the money, and to receive it (*c*). From the above two cases, the following rule is deduced by the Board of Revenue, Madras :—"Practically every application made by a vakil on behalf of another person to a Court or other authority must, if such application involves or may involve enquiry into the merits of such application, be made by a vakalatnama or muktiyarnama stamped with an appropriate court-fee stamp under Article 10 of the Court Fees Act; but if the application

(*a*) Ref (1878), I L R 3 Cal 767 ; 3 C L. R. 18.

(*b*) Ref (1885), I L. R 9 Mad. 146

(*c*) Ref (1886), I L. R 9 Mad 351 ; Mad B P No 978, 28th April 1886.

is one that involves no enquiry, then, if it be not one distinctly connected with a suit or judicial proceeding the application must be made by a power-of-attorney stamped under the provisions of Article 50 of the General Stamp Act (1879)' (*a*) This inference seems to have been broadly drawn A revenue agent cannot under a muktiyarnama stamped under the Court-fees Act be considered empowered to perform any of such acts, as taking documents from an office or drawing money, &c, and unless, therefore, it is stamped as a power-of-attorney, he can do no more than conduct the revenue case (*b*)

A document purporting to authorise the person in whose favor it was executed, who was not a certificated mukhtar or pleader, to appear and do all acts necessary for the execution of a decree of a Court requires to be stamped as a power-of-attorney and not as a vakalatnamah or muktarnamah (*c*) But the Chief Court of the Punjab dissented from the above judgment of the Allahabad High Court and held that a power-of-attorney in favour of a person who is neither a Vakil of a Court, nor a certificated mukhtar of a Court for the conduct of a case in a Civil Court not being a Presidency Small Cause Court was governed by Art 10, Sch. II of the Court-fees Act, while agreeing with the Allahabad High Court that the documents specified in Article 10 of the second Schedule of the Court-fees Act are the documents which it was intended to exclude from the definition of a power-of-attorney in s. 2 (21) of the Stamp Act (*d*)

A power-of-attorney executed by a person employed in the "Queen's Own Madras Sappers and Miners" in favor of another for defending a civil suit on his behalf was held to be not chargeable under the Stamp Act and to be exempt from court-fees as a document falling under s. 19 (i) of the Court-fees Act (*e*).

(*a*) Mad. B P. No 978, 28th April 1886

(*b*) Cal. Bd.'s Cir No. 8 of April 1876

(*c*) Parmanand *v* Sat Prasad (1911), 1 L. R. 33 All. 487 ; *cf.* Venkatarama Aiyar *v.* Narasinga Rao (1913), 24 M. L J. R. 180.

(*d*) Ganpat *v.* Prem Singh, No 202, P L R. 1912

(*e*) Refd. case No. 9 of 1899, M. H. C.; B. P. No. 270, 17th Oct. 1899

Where a person executed a promissory note for money borrowed and deposited the title deeds of certain property as security and in addition executed a document purporting to be a power-of-attorney and authorising the sale of the property in case the loan was not repaid, it was held by the High Court that the latter document was only a power-of-attorney for the purposes of the stamp Act and not a mortgage (*a*).

See notes under "Agreement," Art. 5, and "Power of Attorney," Art, 48, Sched. I, *infra*.

"promissory note"

(22) "*promissory note*" *means a promissory note as defined by the Negotiable Instruments Act, 1881; it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen:*

This is new.

There was a definition of 'promissory note' in Act XVIII of 1869, but it was omitted in Act I of 1879. The present definition is borrowed from the English Stamp Act, 1891, (51 and 55 Vic. c. 39, s. 33). The second clause of the sub-section expressly includes conditional promises to pay a sum of money (*b*), which do not come within section 4 of the Negotiable Instruments Act, XXVI of 1881, which defines 'promissory note' thus:—

"A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."

Illustrations.

A signs an instrument in the following terms:—

(*a*) "I promise to pay B or order Rs. 500."

(*a*) Mad. B. P. No. 570, 15th Dec. 1891.

(*b*) Cf. Yeo *v.* Dawe (1886), 53 L. T. 125; 32 W. R., 208.

(*b*) "I acknowledge myself to be indebted to B in Rs. 1000 to be paid on demand for value received.'

(*c*) "Mr. B, I owe you Rs. 1,000."

(*d*) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(*e*) "I promise to pay B Rs. 500 first deducting thereout any money which he may owe me."

(*f*) "I promise to pay B Rs. 500 seven days after my marriage with C."

(*g*) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(*h*) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes."

See notes under section 2 (3), *ante*, for the definition of "conditional," "certain" and "certain person."

Scope of section :—The corresponding provisions of the English Stamp Act of 1870, s. 49, (s. 33 of the English Stamp Act, 1891) were considered in *Mortgage Insurance Corporation* v. *Commissioners of Inland Revenue* (*a*) and *Brown, Shipley and Co.* v. *Commissioners of Inland Revenue* (*b*), and the decisions in these cases show that unless some limitation be placed upon the words of the section, they would include every document containing a promise to pay. In a recent case (*c*), it was observed :—

"That definition undoubtedly covers a great many things that would not be embraced in what may be called a commercial promissory note as defined in s. 83 of the Bills of Exchange Act, 1882. On the other hand, as has been pointed out more than once in decided cases, it is not possible to give an absolutely unlimited extension to the definition in the Stamp Act. The ordinary sense of the expression "promissory note," although it does not conclude the matter, is a factor in determining whether a particular document falls within the definition in the Stamp Act or outside it. That factor, from the point of view of a person conversant with negotiable instruments, has been under consideration more than once in the cases that

(*a*) (1887) 20 Q. B. D. 645 ; on appeal, (1888), 21 Q. B. D. 352.

(*b*) [1895] 2 Q. B. 598.

(*c*) Speyer Brothers *v.* In. Rev. Commrs., [1907] 1 K. B, 246.

have been cited to us—more particularly in *British India Steam Navigation Co.* v. *Commissioners of Inland Revenue* (*a*), and in a subsequent case in the Court of appeal the point was considered by Lord Esher and the Lords Justices who formed the Court—*Brown, Shipley and Co.* v. *Commissioners of Inland Revenue* (*b*). We cannot, therefore, in arriving at a conclusion in this case, exclude the popular sense attached to the expression 'promissory note' (*c*).

As a promissory note payable to order or bearer and attested by a witness is a bond within the meaning of s. 2 (5)(b) of this Act, for the purpose of this Act it should be treated as a bond and not as a promissory note (*d*).

Promise to pay a certain sum.—In order that a document may come within this sub-section, *first*, it must substantially contain a promise to pay a definite sum of money and nothing more. It must not contain such promise as part of the contract containing other stipulations (*e*). So a promise to pay a certain sum of money and to deliver a certain quantity of grain is not a promissory note (*f*). Similarly, a promise to pay a certain sum and also to give a life policy is not a promissory note (*g*). *Secondly*, a document is not a promissory note, if it does not contain an express promise to pay (*h*). The question whether an instrument is a promissory note or not should be judged by the words used. The instrument must contain in words an undertaking to pay a sum of money and it is not enough that the substantial effect of the instrument should be to make the executant liable to pay a sum of money (*j*); but the undertaking to pay need

(*a*) (1881), 7 Q. B. D. 165. (*b*) [1895] 2 Q. B. 598.

(*c*) [1907] 1 K. B., at p. 252.

(*d*) Refd. case, No. 20 of 1905, M. H. C.; Venku *v.* Sitaram (1904), I. L. R. 29 Bom. 82 ; *see* pp. 39 and 40, above.

(*e*) Mortgage Insurance Corporation *v.* Commissioners of Inland Revenue (1888), 21 Q. B. D., 352, affirming 20 Q. B. D., 645 : cf. Brown, Shipley & Co. *v.* Commissioners of Inland Revenue, [1895] 2 Q. B. 598.

(*f*) Muttu Chetti *v.* Muttan Chetti (1879), I. L. R. 4 Mad. 296 ; Illustration (*h*), *supra*.

(*g*) Follett *v.* Moore (1849), 4 Ex 410.

(*h*) Govind *v* Balvant Rao (1897), I. L. R 22 Bom. 986.

(*j*) *See* Karuthappa Rowthan *v.* Bava Moideen Sahib, [1911] 2 M.W.N. 380.

not be unconditional for the instrument to fall under this Act, for the above clause expressly includes an instrument containing a conditional promise to pay a sum of money. If the document complies with the terms of the section it is not necessary to show that the executant of the instrument intended to make a promissory note (*a*). But, where the document contained the following terms—".....This sum I am bound to pay you Therefore adding to this sum interest.....I am liable to pay..... .." it was held that it was not a promissory note, as the words 'I am liable to pay' do not in fact mean anything more than the previous words in the document, 'I am bound to pay' which clearly do not constitute an undertaking to pay (*b*). An instrument issued by a company purporting on the face of it to be a debenture with coupons for the payment of interest half-yearly attached to it, and containing an engagement on the part of the company to "pay the amount of this indenture" to A. B. or order on a given day, with interest at 5 p. c. was held not to be a promissory note within the similar definition in the English Act (*c*). Again, an instrument, in order to be a promissory note, must contain definite terms. Therefore, an instrument like the following:—"I, T. M., do hereby promise at Allahabad to the Manager of the Agra Savings Bank, Limited, the sum of Rs. 10 on or before the 15th day of October 1876 and a similar sum monthly every succeeding month for value and consideration received"—is so vague and indefinite in its terms that it cannot be regarded a promissory note as "it is impossible from its language to say for what period it is to subsist, or whether the Rs. 10 mentioned in it is to be payable only during the life of the present manager of the Bank or for the whole life of the promisor" (*d*).

Where the defendant wrote a document to the plaintiff as follows:—"I have to pay Vala Rs. 32-8-0 on account of a

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(*a*) Paramasivan Pillai *v.* Sankaraya Chitra Vattiar (1910), 9 M.L.T. 94.

(*b*) Tirupathi Goundan *v.* Rama Reddi (1897), I. L. R. 21 Mad. 49.

(*c*) British India Steam Navigation Company *v.* Comm. of In. Rev. (1881), 7 Q. B. D.. 165.

(*d*) Carter *v.* The Agra Savings Bank, Limited (1883), I.L.R. 5 All. 562.

decree. I will therefore pay you Rs. 15 on 1st Poh. and I will send you Rs. 17-8-0 at the end of Poh."—it was held that it was a promissory note (*a*). In this case it did not appear if the plaintiff had already paid Vala or had already agreed to relieve the defendant from the responsibility of paying Vala, and no condition remained to be fulfilled by the plaintiff; if so, the first sentence is merely a recital of the reason for which payment was to be made.

Where the plaintiff sued the defendant for a certain sum of money relying on an entry in his account-book, signed by the defendant, to the following effect:—"Out of Rs. 22-3-0 due to plaintiff by my late elder brother Husain Khan, I have paid Re. 1; the balance will be paid by instalments.". This entry bore a stamp of one anna. The Court of first instance held that the entry "was not an acknowledgment, whereby the defendant admitted any debt contracted by him or on his behalf, but of the nature of a promissory note payable otherwise than on demand; but it was held by the High Court that the instrument was nothing more than an acknowledgment of a debt and was sufficiently stamped (*b*).

A promissory note is not the less a promissory note because it contains a stipulation to pay interest on default (*c*). So, an instrument in the following terms:—"B writes this "rukka" in favour of A for Rs. 50, cash received, to be repaid on the 13th November 1878; ...in the event of default he shall pay interest at 1 rupee per diem, and receive back the 'rukka' on discharge"— was held by the Full Bench (Stuart, C. J., dissenting) to be a promissory note and not a bond or an agreement not otherwise provided for. (*d*)

Similarly, a document signed by the defendant and in the following terms:— "I have received in cash the sum of Rs. 6000 from B (plaintiff) on account of the amount of the old documents signed by His Highness the Sircar. I will pay the

(*a*) Baiju *v.* Jowahir, 195. P. R., 1883.

(*b*) Band Husain *v.* Yawar Husain, 1883, All. W. N. 127.

(*c*) Nandan Misser *v.* Chattar Bati (1874), 13 B. L. R., App 33; Mad. B. P. No. 770, 21st Nov. 1887 and No. 529, 17th March 1887.

(*d*) Bansidhar *v.* Bu Ali Khan (1880), I. L. R. 3 All. 260.

above-mentioned sum within six months, according to this 'rukka.' If I fail to pay within the prescribed time, I will pay interest at the rate of eight annas per cent. I therefore execute this document that it may serve as an authority. The money will be remitted to the place where the document may be'— was held to be a promissory note payable otherwise than on demand and was not a mere acknowledgment, the agreement to pay interest after the fixed period not rendering the sum payable otherwise than certain, or the mention of the place where the money was to be paid not affecting the question of the character of the document (*a*).

Where a letter written by A to his physician ran as follows :—Whereas you have been for about (the last) 5 years rendering (your) services to us as physician, etc., without receiving any fee, a remuneration of Rs. 2,000 will, within six months from the date of this letter, be given to you and this letter received back. To this effect, this is written and given. Further you will be sent for whenever necessary," it was ruled that the letter was liable to stamp duty as a promissory note (*b*).

A letter which after asking the addressee to write about his welfare continued—"The amount I owe you according to account is Rs. 10,000, and shall pay this sum of Rupees ten thousand within 30th Panguni of the current year" was held to be a promissory note and not an agreement (*c*).

Where a document purported to be a joint and several promissory-note executed by two persons and payable by instalments and provided that the whole should become due on default of any one instalment, and contained the following clause :—"No time given, or security taken from, or composition or arrangement entered into, with either party hereto shall prejudice the rights of the holder to proceed against any other party," it was held that the document was a valid promissory note (*d*). In *Yates* v. *Evans* cited above, a joint and several

(*a*) Bakhshi Ram Labhaya *v* Kaka Ram, 42, P R., 1895.

(*b*) Mad. B. P. R. No. 1360, Mis., 18th June 1903.

(*c*) Mad. H. C., C. R. P. No. 235 of 1909.

(*d*) Kirkwood *v.* Carroll, [1903] 1 K. B 531, overruling Kirkwood *v.* Smith, [1896] 1 Q. B. 582, and approving of Yates *v.* Evans, 61 L. J. (Q. B), 446.

promissory note concluding with the following clause—"Time may be given to either without the consent of the other and without prejudice to the rights of the holders to proceed against either party notwithstanding time may be given to another"—was held not to be an agreement by reason of such a clause but a promissory note.

Proposal.—A letter containing a mere request for a loan and promising that the same shall be repaid with interest on a certain day is not a promissory note but a mere proposal under section 4 of the Indian Contract Act, IX of 1872 (*a*); and the fact that the addressee has already agreed to lend money cannot be taken into consideration in determining whether it is a promissory-note, nor can his conduct in subsequently advancing the loan on the strength of the letter (*b*); but it was held in a Madras case (*c*) that such a letter would operate as a promissory note, if there were words in it indicating an intention on the part of the writer of the letter that it should be retained by the creditor as a security for repayment if he sent money: and so, the letter in question in that case which recited a request for a loan of a certain sum and continued, "this sum I shall repay and get back this letter. I request you will not neglect to pay on the strength of this letter," was held to be not a mere proposal for a loan but a promissory note But in another case a similar document was held not to be a promissory note on the ground that it was a mere proposal for a loan (*d*). And in a subsequent Full Bench case (*e*) this case and the above Bombay case were followed and the Court held that a document in similar terms was not a promissory note, overruling the above decision in *Channamma* v. *Ayyana*.

(*a*) Dhondbhat Narharbhat *v.* Atmaram Moreshvar (1889), I. L. R. 13 Bom. 669.

(*b*) Add. on Con., p 1243; Hudspeth *v* Yarnold (1850), 9 C. B. 625.

(*c*) Channamma *v* Ayyana (1892), I. L. R. 16 Mad 283

(*d*) Narayanaswmy Mudaliar *v* Lokambalammal (1897), I. L. R. 23 Mad. 156, Footnote.

(*e*) Bharati Pisharodi *v* Vasudevan Nambudri (1903), I. L. R. 27 Mad. 1.

Promissory note distinguished from acknowledgment of debt

An instrument containing a mere acknowledgment of debt is not a promissory note, unless it is followed by a promise to pay the debt (*a*), and such a promise may be implied (*b*) Two documents signed by the defendant, each bearing a one anna stamp, in one of which a sum of Rs 203 was stated to be "due to you and payable on the 16th July" and in the other a sum of Rs. 615 was mentioned, "for which I give you this writing, the whole amount of which will be paid up in full on the 3rd August were held to be not mere acknowledgments but promissory notes payable otherwise than on demand (*c*). An acknowlegment of old balance due and of a fresh advance and a promise to pay the same with interest amount to a promissory note (*d*).

Agreement:—Where a document the executant of which undertook to make certain specified payments towards the sum due under it and agreed that his failure to do so should render him liable to forfeit any payments already made and to return a boat which he had bought, it was held that the document was not a promissory note payable otherwise than on demand but only an agreement. (*e*)

Alteration:—The alteration of a promissory note by substituting a less rate of interest upon the consent of the payee to accept the reduction in future would require a new stamp (*f*). *See* notes on this point at pp. 29-30 above.

See notes under "Bill of Exchange," s 2 (2 & 3), pp 20-4, 29, 31, and "Bond." s 2 (5), p. 39; *ante*, and under 'Agreement,' Art. 5; 'Bill of Exchange.' Art. 13; and 'Promissory Note,' Art. 49, Sch. I, below.

(*a*) Fisher *v.* Leslie (1795), 1 Esp, 426; Karuthappa Rowthan *v.* Hava Moideen Sahib (1911), 2 M.W.N. 380.

(*b*) R. D. Sethna *v.* Mirza Mahomed Shirazi (1907), 9 Bom. L.R. 1084, at p 1088.

(*c*) Manick Chund *v* Jomoona Doss (1880), I. L. R. 8 Cal. 645.

(*d*) Makbul Ahmed *v.* Mussumat Iftikharunnissa Begum (1875), 7 N W. P., H. C R., 124

(*e*) Katchi Rowther *v.* Naina Mohamed, 28 I, C. 300.

(*f*) Sutton *v.* Toomer (1827), 7 B & C, 516.

"receipt."

(23) "receipt" *includes* any note, memorandum, or writing—

(*a*) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or

(*b*) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or

(*c*) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(*d*) which signifies or imports any such acknowledgment,

and whether the same is or is not signed with the name of any person.

Cf. Act I of 1879, s. 3 (17); 54 & 55 Vict. C. 39, s. 101.

Act I of 1879 was more comprehensive than Act XVIII of 1869, so far as the definition of "receipt" was concerned. "Receipt" as defined in this sub-section has a wider meaning than under Act I of 1879. The word, "advertisement" occurring in the definition in Act I of 1879 is left out in the present Act, as the machinery of the Act is not applicable to advertisements acknowledging the receipt of money (*a*). Advertisements of receipts of money exceeding twenty rupees are therefore no longer liable to duty. The definition of "receipt" in the English Stamp Act corresponds to clauses (a), (c) and (d) of the present definition.

As there is a large number of exemptions under this head in the schedule, this sub-section must specially be read along with them.

(*a*) Statement of Objects and Reasons, App. E., p. cccii.

What constitutes a receipt.

To constitute a receipt, it is not sufficient that there should be a statement that money was received; there must be an acknowledgment, either express or implied. Thus, where A made a payment of Rs. 22 to B, and at A's request, C, a servant of B, made a memorandum to the following effect: B has received Rs. 22'—the memorandum was held not to be a receipt, as there was no acknowledgment by B (*a*). So a memorandum importing that one party has paid money but containing no acknowledgment by the other that he has received it is not a receipt (*b*). Similarly, entries made in an account book of the receipt of money for the information of the person keeping the account are not 'receipts,' as the word 'acknowledge' in the definition implies an acknowledgment to a second person, generally the person paying the money. Any other construction would render entries on the receipt side of a bank pass-book "receipts" within the meaning of the Act, and such entries have never been held liable to stamp duty (*c*). Such receipts by bankers are also expressly exempted by clause (h) of the Exemptions to Art. 53, 'Receipt,' Sch. I, below. It has been held that, in order to be liable to duty, the receipt should be one given only to the person paying the money (*d*). A written acknowledgment at the foot of an account stating that such account is correct, can be given in evidence without a receipt stamp (*e*).

Clause (a).—An entry made by a creditor not in his book but in the khatta-book of the debtor, and signed by him for the payment of a sum of money in discharge of a debt is a receipt (*f*). A letter acknowledging the receipt of money or cheque is a receipt within this clause (*g*). Where a document was

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(*a*) *In re* Jamnadas Harinaran (1897), I. L. R. 23 Bom. 54.

(*b*) Rex *v.* Harvey, I. R. & R., 227.

(*c*) From Board N. W. P. and Oudh to Commissioner of Stamps, No. 715/*Vs*-128, 3rd July 1885.

(*d*) In the matter of the Uncovenanted Service Bank (1879), I. L. R. 4 Cal. 829, at p. 830.

(*e*) Wellard *v.* Moss (1823), 1 Bing. 134.

(*f*) Queen Empress *v.* Juggernath (1885), I. L. R. 11 Cal. 267.

(*g*) Ref. (1884), I. L. R. 8 Mad. 11; Queen Empress *v.* Muthirulandi (1887), I. L. R. 11 Mad. 329.

produced, purporting to be a receipt for money given by the agent of a person who received money from different customers for the purpose of negotiating the sale and purchase of annuities, it was held that the document required a receipt stamp (*a*). A Bank memorandum informing one of the customers of the bank that money had been paid to his account by a third person and had been credited to that account was held not to be a receipt within the meaning of Art. 7, Sch 9, Act XVII of 1869, as it did not appear to have been given for or upon the payment of money in satisfaction of a debt (*b*). But such a memorandum would clearly fall within this clause as all receipts for money paid, whether in satisfaction of a debt or not, are included in it ; and as to whether it would be exempt from duty under clause (k), Article 53, Sch. I, see under that Article, below.

A receipt given for earnest money on account of a "satta" for the delivery of cotton (*c*) ; or by a tenderer for a contract for the sum returned to him when his tender is not accepted (*d*), requires to be stamped. A stamped receipt should be taken by a Court from a party to a suit before an order for payment of the deposit money from a Government Bank or Treasury is issued (*e*). The parties need not present again a stamped receipt when taking payment from a Government Treasury or Bank (*f*). Local Board Bills for sums exceeding Rs. 20 and presented at the Treasury for payment require to be stamped as receipts, notwithstanding the Local Board obtains stamped receipts on its acquittance rolls or otherwise (*g*).

(*a*) Catt *v.* Howard (1820), 3 Stark. 3. See the converse case of Clark *v.* Hougham (1823), 3 D. and R., 322 at p. 325.

(*b*) In the matter of the Uncovenanted Service Bank (1879), I L. R. 4 Cal., 829.

(*c*) I. G. R. No. 6509, 9th Dec. 1887.

(*d*) Mad. B. P. No. 633, 17th July 1888.

(*e*) Mad. H C. Rules, 25th Nov. 1885, para 7 ; Cal. H. C. Cir. No. 22 of 1865, 4 Suth. W. R. (Civ. Cir.) 1.

(*f*) Mad. B. P. No 246, 13th June 1893.

(*g*) Mad. G.O. No. 929, Rev, 6th Sept. 1892, embodied in B. P. No 511, 7th Oct. 1892.

Documents acknowledging the receipt of kudivaram (*a*), or of house-tax due to a municipality (*b*) and receipts given by the Assistant Inspector of Schools for moneys payable to Local Fund Salary Results schoolmasters(*c*), have been ruled to require a receipt stamp.

This clause requires a writing acknowledging the receipt of a bill of exchange, cheque, or promissory note to be stamped as a receipt. s. 47 empowers the payer to stamp such an instrument chargeable with the duty of one anna, if unstamped, and s. 62 provides a penalty for drawing, etc. such an instrument without a stamp Where an Engineer issued an unstamped cheque to A and obtained a stamped receipt from him, it was ruled that a receipt stamp should be attached when the cheque was presented to a Treasury for payment.(*d*)

Account.—A written acknowledgment at the foot of an account stating that such account is correct may be given in evidence without a receipt stamp (*e*). But a receipt stamp is necessary where it appears from the paper that the acknowledgments were made at successive times upon the receipt of the money (*f*). The case of a *bona fide* account current is different: there the sums stated to be received are not written into the account, at and upon the receipt of the money, but long after, and only amount to admissions of money received at an antecedent time (*g*).

A solicitor was employed by a bank under an agreement whereby he was appointed an officer of the bank upon the terms that he was to be paid a salary, and to be provided with an office, stationery and staff of clerks, and was to devote his whole time to the conduct of the legal business of the bank. The solicitor

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(*a*) Mad. B. P. No. 1858, 7th Dec. 1880.

(*b*) Mad. B. P. No. 361, 29th May 1889.

(*c*) Mad. B. P. No. 334, 2nd June 1891; B. P. No. 392, 1st July 1891.

(*d*) Mad. B. P No. 139, 19th Jany. 1886

(*e*) Wellard *v.* Moss (1823), 7 Moore, 503; 1 Bing. 184.

(*f*) Wright *v.* Shawcross, 2 B. and Ald. 501, *note*; Jacob *v.* Lindsay (1801), 1 East. 460.

(*g*) *Per cur.*, Ibid.

from time to time sued for and recovered sums of money due to the bank. As each sum was recovered he entered the amount in an account-book, and then in accordance with his duty handed over the money to the secretary or cashier of the bank, who wrote against the entry in the account-book his initials and the date on which the money was handed over to him, in some instances adding the word "received." The account-book was the property of the solicitor and remained in his possession. It was held that as the initialling of the entries in the account-book, whether with the addition of the word "received" or not, was intended as an acquittance of the solicitor in respect of the money handed over by him, the entries so initialled constituted "receipts" and required to be stamped, none the less because the solicitor was a servant of the bank on whose behalf he had received the money and the acknowledgment of the receipt of the money from him was given by a fellow-servant (*a*). Whether such entries would be exempt from duty under this Act was considered and this case distinguished in the following case. Where a sum exceeding Rs. 20 was received by an assistant in a mercantile firm from the cashier of the firm as advance made on the firm's behalf, and previous to disbursement of the sum in question a pay-order was made out by the accounts department of the firm and was sent to the cashier who had paid the sum to the assistant, and the assistant at the same time acknowledged receipt by signing his name or initials on the pay-order, it was held that the acknowledgment did not require a receipt stamp by reason of the Assistant's signature on the pay-order (*b*). The Court distinguishing the above English case of *Attorney-General* v. *Carlton Bank* observed :—

"It was a decision on the English Stamp Act, 1891, in which there is no provision, as there is in the Indian Act, for exemption where payment is made without consideration. And it is further to be noticed that there the money, for payment of which the acknowledgments were given, was received by C. S. Coxwell from customers of the Bank and handed over by him to the Bank, so that the money did not come into the Bank's possession until handed over by Coxwell. In the opinion of the Lord Chief Justice, when Coxwell handed over the moneys to the Bank, he in fact was

(*a*) Attorney-General *v.* Carlton Bank, [1859] 2 Q. B. 158.

(*b*) Burn and Co., *In re* (1910), I. L. R. 37 Cal. 634.

paying a debt and the receipt was given by the Bank. Here, however, it would be impossible to hold that there was the relation of debtor and creditor either between the Assistant and the Cashier or as between the Assistant and his employer, the company." (*a*)

The entry of his name made in a book of a firm in accordance with the course of its business by a person who was in the employ of a creditor of the firm and who received from it a large sum due to his employer, no other receipt being taken for that purpose, was held to be a receipt requiring a stamp (*b*).

Clause (b).—This clause applies only when two conditions are satisfied; namely, (1) the acknowledgment must relate to moveable property other than those mentioned in clause (*a*); (2) the receipt of such moveable property must be in satisfaction of a debt. So, where the defendant in a suit on a bond set up the plea that the bond had been paid in part in sugar-cane juice, and as evidence of this fact, produced a document called "sarkhat" alleged to be signed by the plaintiff acknowledging the receipt of sugar-cane juice the price of which exceeded Rs. 20, it was held that as there was nothing in the document which showed that the sugar-cane juice had been received in part satisfaction of the bond, the document was not a receipt but a memorandum of sugar-cane juice supplied and required no stamp (*c*).

Moveable property.—A receipt given for moveable property received not in satisfaction of a debt is not liable to duty as it does not come within the definition of "receipt." An acknowledgment by a ryot of the return of distrained property under the Estates Land Act I of 1908 is not a receipt within the meaning of this clause (*d*). It has been ruled that a receipt taken from a prosecutor on the restoration of his stolen property, or from the owner of moveable property when it is released from attachment, does not require to be stamped (*e*).

(*a*) Burn & Co., *In re*, I. L. R., 37 Cal. 631, at p. 640.

(*b*) Reg *v.* Overton, (1854) 23 L. J. M. C. 29.

(*c*) Debi Prasad *v.* Rupu (1881), I. L. R. 6 All. 258.

(*d*) Mad. G.O. No. 2877, Rev., 20th Sep. 1912; B. P. Mis., No. 1253, 10th Oct. 1912, impliedly overruling Mad. B. P. No. 1340, 15th June 1886.

(*e*) From Bd. of Rev. N. W. P. and Oudh to Commissioner of Stamps, No. 139/Ps.-61, 19th March 1883.

Clauses (c) and (d).—A writing given by the secretary or other manager of a club to a member acknowledging payment of a club bill is a receipt, as payment of a club bill is in satisfaction of a debt or demand (*a*). Similarly, if a party on payment of his bill writes the word "settled" on the bill by way of receipt, it requires to be stamped (*b*). In an action for goods sold and delivered in which the defendant pleaded payment, the only evidence offered in support of the plea was a memorandum in the following form signed by the plaintiffs :—"That any demand we may have against Mr. G. W for iron work, &c., is this day discharged in consideration of services rendered by him to us. *N. B.*—Particulars of our account shall be delivered with a receipt stamp." It was held that, since the document was offered as evidence of a transaction amounting to payment of money, it was offered as a receipt or discharge for or upon the payment of money (*c*). Where M. was indebted to J. on a mortgage debt, and J., being the lessee of certain houses belonging to M. was in arrear of rent for five quarters, the following letter delivered by M to J—"Mr. J. having written off his mortgage debt the sum of 72*l.*, being five quarters' rent of his house, I hereby discharge the same rent till 24th July 1841"—was held to be a receipt (*d*).

A memorandum of account between a debtor and his creditor, which was left in the possession of the debtor and consisted of entries on one side of sums of money advanced and on the opposite side of sums of money repaid by the debtor and which shewed that the account was finally closed by the payment of a balance of Rs. 50 and odd and to which a receipt stamp was attached and signed by the creditor in acknowledgment of such receipt, was held to be a document which required a separate receipt stamp in respect of each item of over Rs. 20, on the ground that when each item of receipt was entered by

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(*a*) Ref. (1885), I. L. R. 10 Mad. 85.

(*b*) Spawforth *v.* Alexander (1795), 2 Esp., 621; Smith *v.* Kelby (1803) 1 Esp., 249.

(*c*) Livingstone *v.* Whiting, [1850] 15 Q. B. 722.

(*d*) Lucas *v.* Jones, [1844] 5 Q. B. 949.

the creditor, the memorandum imported an acknowledgment of a part payment of the debt. (*a*)

See notes under "receipt," Art. 53, Sched. I, *infra*.

"settlement." (24) "settlement" means any non-testamentary disposition, in writing of moveable or immoveable property, made—

(*a*) in consideration of marriage,

(*b*) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, *or for the purpose of providing for some person dependent on him*, or

(*c*) for any religious or charitable purpose: and includes an agreement in writing to make such a disposition; and

where any such disposition has not been made in writing, any instrument recording whether by way of declaration of trust or otherwise, the terms of any such disposition

Cf. Act I of 1879, s. 3 (19)

The last paragraph was inserted by the Stamp Amendment Act, XV of 1904. This paragraph was added with the object, it was said, 'of preventing the evasion of stamp duty imposed on settlements which is at present effected by the simple expedient of making an oral disposition of the property to be settled and then recording the terms of the disposition in declaration of trust in which the settlor and the trustees join.' (*b*)

Clause (a).—Where an instrument after referring to the property dealt with by it as being already settled and reciting a deed of revocation of the previous settlement, went on to declare certain specific trusts, upon which the property was to be held

(*a*) Emperor v. Tulshi Ram (1913), I.L.R. 35 All. 290.

(*b*) Report of the Select Committee, *vide* App. E, p. ccexxvi.

after the death of the intended husband, there being a power of appointment given to the husband and wife, or the survivor of them, in favour of children or remoter issue of the marriage, and in default of appointment, trusts in favor of children declared, it was held to be a marriage settlement being clearly an instrument by which property "is settled or agreed to be settled" (*a*).

Clause (b).—It was observed that this definition of the term 'settlement' in clause (b) suggests the creation of an interest in favour of a person who may have a legal or moral claim on the settlor or for whom he may desire to make a provision. So, where a person on account of natural affection has owed absolutely upon his sister and her son jointly certain land by an instrument, the instrument was held not to be a settlement but a gift, the Court observing, "In this case, there is an absolute and unqualified gift to two persons jointly, and although the result must be that a provision is made for them, it does not appear that it was the object of the gift" (*b*). The same Court held in a later case that an instrument by which not an unqualified and absolute disposition of property as in the above case was created, but a life interest in favour of a person with remainder to the settlor and his heirs, was a settlement and not a gift (*c*). The High Court in the first case cited above was apparently of opinion that as the use of the word 'distributing' conveys the idea of division among several persons, the term 'settlement' cannot be properly applied to a transaction in which only one person is benefited. But the words "or for the purpose of providing for some person dependent upon him" have been added in the present definition so as to prevent the exclusion from it of a settlement in favour of a single person (*d*). The Bombay High Court has also held that an instrument by which the executant made over his house to his sister-in-law for occupation during her life was a settlement, though the disposi-

(*a*) Russel *v.* In. Rev Commrs, [1902] 1 K. B., 142, 150, affirming [1901] 2 K. B. 342.

(*b*) Rer (1884), I. L. R. 7 Mad. 349.

(*c*) Ref (1898), I. L. R. 21 Mad. 422; Mad. B. P. No. 48, 16th Feb. 1898; Mad. B. P No. 16, 6th Jan. 1880.

(*d*) App. E, p. ccexxix.

tion of ths house was in favor of a single member of the family (*a*).

Settlement or Will.—An important test to distinguish a settlement from a testamentary instrument is whether the document is clearly intended to have immediate operation or is revocable. An instrument called a trust-deed by the party executing it was intended to have immediate operation and it vested the property in the trustees at once, but the provisions as to the management and the ultimate beneficial interest in the property showed that it was contemplated that its operation might extend beyond the lifetime of the owner; yet it was held to be a settlement and not a will (*b*). Sargent, C. J., observed, "The reservation of the management by the owner during his life cannot affect its character. In *Crossman* v. *The Que n* (18 Q.B.D., 256) . . . it was held that even the reservation of a life estate by the settlement did not render the instrument less a settlement" (*c*). Where a document contains provisions which are not of an ambulatory character, the presumption will be against the testamentary nature of the document and the fact that such provisions are expressed to operate in the future will not affect the nature of the document (*d*). Thus, where an instrument drawn in the form of an agreement in favour of the executant's wife and his son's widow and registered ran in the following terms :—"I shall transfer the patta of the lands and the salt-pans hereunder described in the name of you both nominally and give you Rs. 5 each every month till I die, and after my death you shall not only have the rights I have in the said lands and salt-pans, but also the profits accruing therefrom in proportionate shares after paying the sircar kists in moieties", and contained a declaration that his future debts should not be binding on the properties and a promise to make a gift of jewels to both of them, it was

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(*a*) Bailakhi *v.* Amaidas, Bom. P. J. 1887, p. 243.

(*b*) Ref. (1895), I. L. R. 20 Bom. 210. From Board of Revenue, N. W. P., to Commissioners of Stamps, No. 628 N *Vs.*-99, 4th July 1882.

(*c*) Ref. (1895), I. L. R. 20 Bom. 210. ; Rajammal *v.* Authiammal, (1909), I. L R. 33 Mad. 304.

(*d*) Rajammal *v.* Authiammal, above.

held to be a deed of settlement and not a gift (*a*). Where a document which was described on the face of it as a will contained dispositions intended to be carried out only after the death of the executant but contained no immediate assignment and created no trustees, made no provision for the maintenance of the settlor during his life and was not registered or presented for registration until after the death of the executant, it was held that the document was a will (*b*). Where a person, while suffering from an attack of cholera, executed a document transferring all his properties to his wife and died within a day or two afterwards, it was held that the use of the words 'Maranantara vil sasanam' in the document clearly showed that it was a will (*c*). Similarly, an instrument which contained these terms—"As I have become old, it is necessary that I should make in a document the disposal of my property with the object of preventing disputes hereafter about it I therefore execute this document and direct that the village of M is to be enjoyed hereditarily, that my son has an independent right like that which was exercised by me over the village.....I put him in possession of the same from this day. He is the owner of my own and my ancestral property of every description....," was held to be a settlement (*d*). But a deed of family arrangement by which one brother paid a certain sum absolutely and granted a pargana, subject to certain conditions, to his younger brother in consideration of the latter relinquishing his claims on his brother, was held not to be a settlement and to require no stamp under Act I of 1879 (*e*); but it would be a conveyance under the present Act (*f*).

Under the English Stamp Act, the subject matter of the settlement must be definite and certain; and certainty does not

(*a*) Rajammal *v.* Authiammal (1909), I. L. R 33 Mad. 304.

(*b*) M H. C. Ref. Case No. 8 of 1899; s.c. Mad. B. P. No. 267. 17th Oct. 1899.

(*c*) M. H. C Ref. Case No. 22 of 1895; s.c. Mad. B. P. No. 430, 22nd Oct. 1896.

(*d*) *In re* Subedar Hussein Shakhan, Bom. P. J. 1882, p. 247.

(*e*) In the matter of the Maharajah of Durbhanga (1880), I. L. R. 7 Cal. 21.

(*f*) *See* notes under s. 2 (10), *supra*.

refer to the nature of the settlor's rights or title to property. It is immaterial that the settlor's title to property is contingent (*a*), or defeasible by persons not subject to his control or by circumstances independent of human control. The same principle would seem to apply to settlements under the Indian Act, though the definition does not contain the words "definite" and "certain."

A deed of settlement remains a settlement within the meaning of this sub-section (as modified by Act XV of 04), although it records by way of declaration or otherwise the terms of a disposition, not made in writing, at a date anterior to the passing of Act XV of 1904 (*b*). In this case one T. established an institution in 1892 in which religious instruction was to be combined with a public library. The land and buildings erected thereon were valued at Rs. 30,000, while an equipment of books, furniture, etc., to the value of Rs. 25,000 was provided. T. managed the institution until 1898 when at a public meeting he was said to have dedicated it to the public. At the same time he appointed a committee to conduct its affairs. On 26th May 1905 he executed a trust deed having made over on the 25th March 1905 a sum of Rs. 35,000 in promissory notes to certain trustees for the furtherance of the objects set forth in the deed.

Where an indenture dated 5th April 1898 between M. and his wife of the first part, A. (a trustee of the settlement) of the second part and C. (a proposed new trustee) of the third part and expressed to be supplemental to a deed dated 3rd Oct. 1870 which was a settlement made previously to the marriage of M. and also to another deed dated 11th July 1887 which was amongst other things an appointment of new trustees of the settlement, recited that some of the lands comprised in the settlement had from time to time been sold and part of the sale moneys was applied in part discharge of incumbrances and the other part was invested in certain stocks, and after further reciting that M. and his wife were desirous of appointing C. a trustee of the settlement in place of one F. who died, and that

(*a*) Onslow *v.* Commissioners of Inland Revenue, [1891] 1 Q. B. 289.

(*b*) *In re* Mun Sukhram, 7 Bom. L. R. 931.

the investments in stocks were intended to be forthwith transferred into the joint names of A. and C., stated that M. and his wife appointed C. a trustee of the settlement and declared that all the estates and stocks held by A. the surviving trustee should thenceforward vest in A. and C. as trustees of the settlement upon the trusts and subject to the powers applicable thereto by virtue of the settlement, it was held that the instrument was not a settlement but was a deed appointing a new trustee and vesting in the continuing and new trustees such portions of the trust property as were capable of being vested by such deed (*a*). In this case Palles, C. B., observed :—

"It seems clear that it is wholly inaccurate to describe the instrument as one whereby "moneys, stocks or securities are settled or agreed to be settled." This description comprises such instruments only as, by their own force, either by actual transfer or by agreement therein contained, impose or agree to impose, trusts upon property which previously was free from the same. It is essential to such an instrument that there shall be, —(1) such free property, by which I mean property which then is not, according to our jurisprudence, subject to the trusts in question; (2) a settlor who either is, or appears on the face of this instrument to be competent to subject that free property to trusts which, until the execution of the instrument, did not bind it; and (3) an imposition by the instrument of such trusts upon such property. Now, in the present case, each of these three elements is necessarily absent."

Similarly, where funds amounting to about Rs. 3,00,000 devoted to charity by an instrument of trust came to the hands of the trustees from two sources, about Rs. 1,00,000 being the result of appeals to various persons and the rest being provided by the executors of the will of one A. H., it was held that so far as the fund of Rs. 100,000 was concerned, there being no previous disposition in writing of any part of it though some of the contributions were accompanied by letters from donors expressing their wishes with respect to the funds contributed, the instrument was a settlement and that so far as the fund of Rs. 2,00,000 was concerned the provision of the will of A. H. amounted to a disposition for a charitable purpose and the instrument was an appointment chargeable with a duty of

(*a*) Massereene and Ferrad *v.* Commrs. of In. Rev., [1900] 2 I.R., 138.

Rs. 15 under Schedule I, Article 7 of this Act (*a*). In a document purporting to be a settlement executed in consideration of marriage, the property to be inherited by the settlor on the happening of certain events was vested in trustees who were directed to pay the income to the settlor during his life-time and after his death to his intended wife, if surviving. The trustees were further to hold the property in trust (after the death of the settlor and his intended wife) for all or any of the children of the intended marriage in the manner appointed by the settlor and his intended wife or by the survivor of them by deed, will or codicil. It was ruled that the appointment of trustees to carry out the settlement was not a distinct matter and that the document was chargeable only as a deed of settlement (*b*).

Settlement of policy :—No definition of settlement is given in the English Stamp Act. In the schedule to the Act the word "settlement" is the index word to a paragraph which imposes tax upon any instrument "whereby any definite and certain principal sum of money is settled or agreed to be settled." In *Sanville* v. *Inland Revenue Commissioners* (*c*), it was held that a settlement of a life-policy was not a settlement of a definite and certain principal sum of money. In consequence of this decision the English Stamp Act of 1864, s. 12 was enacted, which made the settlement of a life-policy chargeable and which is reproduced in s. 124 of the Stamp Act of 1870 and s. 104 of the Stamp Act of 1891. Under this Act, a settlement means a disposition in writing of moveable or immoveable property. As interest in a policy of insurance is property, a settlement of any money which may become due or payable upon any policy of life insurance will come within the meaning of this sub-section.

By a settlement made in 1892 by a father, son, and grandson, certain freehold hereditaments, being the family estates, were settled upon such trusts and to such uses as the settlors should jointly appoint, and in default of appointment to the use

(*a*) Abdulla Haji Dawood Bowla Orphanage, *In re* (1911), I. L. R 35 Bom. 444.

(*b*) Mad. B. P. R. No. 2745 Mis., 5th Dec. 1903.

(*c*) (1854), 10 Ex. 159.

of the father for life, with remainder to the son and grandson successively for their respective lives with remainders over in strict settlement. By another indenture of the same date certain policies of insurance on the life of the grandson, and all moneys to become payable thereunder, were assigned to trustees to hold upon the trusts of the settlement applicable to the proceeds of sale of the family estates, if sold. Both indentures were duly stamped. By an indenture dated December 19, 1894, the settlors, in exercise of the joint power, appointed part of the hereditaments to the use of the father for life and the remainder to such uses as the son and grandson should jointly appoint, and in default of appointment to the use of the son for life by way of restoration of his life estate as subsisting immediately before the execution of the indenture of 1894, but so that it should be an estate in possession and not in remainder, with remainder to the use of the grandson for life, with divers remainders over in strict settlement. By the same indenture the settlors further declared and appointed that for the purposes of the policy settlement of 1892 the trusts of the indenture of 1894 should be the trusts upon which the policy moneys should be held, not under any new disposition or settlement, but on the footing of the indenture of 1894 being a restoration of the trusts thereby declared, save that the father should thenceforth have no interest therein. It was held that money which might become payable upon a policy of life insurance was "settled" by the indenture of 1894, within the meaning of s.104 of the Stamp Act, 1891, on the ground that a new disposition was made of the interests in the policy moneys contingently to be paid upon these policies differing from the disposition made in 1892 and therefore creating a settlement in 1894 (*a*).

See notes under Art. 58, 'Settlement,' Sch. I below.

(*a*) Duke of Northumberland *v.* In. Rev. Commrs., [1911] 2 K. B. 343, affirmed on this point in [1911] 2 K. B. 1011.

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

Instruments chargeable with duty.

3. Subject *to the provisions of this Act* and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that schedule as the proper duty therefor respectively, that is to say—

(*a*) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in British India on or after the first day of *July, 1899;*

(*b*) every bill of exchange, cheque or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in British India; and

(*c*) every instrument (other than a bill of exchange, cheque or promissory note) mentioned in that schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India and is received in British India:

Provided that no duty shall be chargeable in respect of—

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument ;

(2) *any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act XIX of 1838, or the Indian Registration of Ships Act, 1841, as amended by subsequent Acts.*

Cf. Act I of 1879, s. 5 , 54 and 55 Vic. c. 39, ss. 1 and 14

Instruments not mentioned in Schedule I are not subject to stamp duty, as for instance, wills. Wills were not subject to duty under the Regulations (*a*). They were specially exempted by Act XXXVI of 1860 and Act X of 1862, apparently because there was a general clause (No. 26 and No. 36 respectively) in Schedule A of those Acts imposing duty on all deeds not otherwise charged. But this clause was intentionally omitted in Act XVIII of 1869 and the provision of a special exemption in favour of any instrument not mentioned in the schedule was therefore unnecessary. Under Act I of 1879 and the present Act also, no instruments are chargeable with duty except those specified in the schedules (*b*).

Executed :—Meaning of.—*See* s. 2 (12), above.

'Provisions of this Act' :—These words were added in this section in this Act to supply an omission in Act I of 1879 so

(*a*) Webbe *v.* Lester (1865), 2 Bom. H. C. R. A. C. J., 52.

(*b*) Cf. I. G. N. No. 707, 24th Jany. 1870 ; I. G., 29th Jany. 1870, Part I, p. 87.

that the body of the Act and the Schedule may be read together in the determination of the duty imposed on instruments, as there are provisions in the body of the Act which define the nature and extent of fhe obligation imposed to stamp the instruments mentioned in the Schedule to the Act, *See* for example, *see* sections 4 to 6 and 20 to 28 of the Act.

Exemptions:—The exemptions are not limited to those mentioned in the Schedule to the Act. The Act must be read subject also to remissions and reductions made by the Governor-General in virtue of the power conferred upon him under s. 9 of the Act. For a list of them, *see* Appendix I, below.

An instrument which, according to its primary object, is liable to charge is not brought within a general exemption by the fact that it may possibly have a subsidiary operation which is protected by that exemption(*a*).—An exemption granted in respect of certain instruments charged in one category of the schedule does not necessarily protect an instrument falling within that exemption, if it also falls within another category of instruments charged. Thus an agreement for the supply of electricity, assumed for the purpose of argument to be an agreement for the sale of goods, wares or merchandise, was held nevertheless liable to duty as a security under the English Act, on account of a provision for quarterly payments of a minimum sum (*b*).

Instrument:—The first thing to be noticed is, that thing which is made liable to the duty is an "instrument" (*c*). What the Stamp Act deals with is not the bargain which arises out of the consent of the parties but the 'instrument' which records that

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(*a*) Deddington Steamship Co. Ld. *v.* In. Rev. Commrs. [1911], 2 K. B. 1001, C. A.

(*b*) County of Durham, Electrical Power Distribution Co. *v.* In. Rev. Commrs. [1909] 2 K. B. 604, C.A. It is suggested in Halsbury's Laws of England that the judgment in this case must be read strictly with reference to the particular instrument under consideration, which was effective as a security, although the consumer might not take any current. *Vide* Vol. 24, p. 711.

(*c*) Per Lord Esher, M. R., in Commrs. of In. Rev. *v.* Angus (1889), 23 Q. B. D. 579.

bargain. (*a*). *Vide* s. 2 (14) above for the definition of the word "instrument."

This is the only section of the Act which imposes any obligation to stamp any instrument. It is the general or operative charging section, Consequently instruments not coming within the purview of this section are not liable to duty. Clause (a) deals with instruments executed in British India. Clauses (b) and (c) deal with instruments executed out of British India. s. 17 deals with the stamping of instruments executed in British India referred to in clause (a) and ss. 18 and 19, of instruments executed out of British India referred to in clauses (b) and (c) of this section.

Clause (a)—Execution in British India.—An instrument executed before the first day of July 1899 is chargeable under the law in force when such instrument was executed or first executed. An instrument can be said to be executed in British India after this Act came into force if it is first executed in British India by some person or persons, and subsequently executed out of British India by others, as the word "chargeable," as defined in this Act, applies to instruments wholly executed in British India as well as those first executed in British India after this Act came into force The expression 'executed out of British India' used in clause (c) of this section, therefore, would apply only to instruments wholly executed out of British India or first executed partially out of British India. If an instrument is executed in British India after the first day of July 1899, it would seem to be chargeable with duty under the present Act whether it relates to property existing in or out of British India or to any thing done or to be done in or out of British India. But, an instrument executed in British India when Act XVIII of 1869 was in force and relating to property situated out of British India, did not require to be stamped, as by defining 'property' in that Act to be, "property being in British India," the Legislature practically excluded from the

(*b*) Per Collins, L. J. in Muller and Co.'s Margarine Ld. *v.* In. Rev. Commrs, [1900] 1 Q. B. 310, at p. 319; Maple & Co. (Paris) Ltd. *v.* Commrs. of In. Rev., [1906] 2 K. B. 831, at p. 841; [1906] 1 K. B. 591, at p. 596; West London Syndicate *v.* In. Rev. Commrs., [1891] 1 Q. B. 226, at p. 232.

operation of the Act instruments relating to the transfer of property situated beyond the limits of British India which were not intended to have any effect within those limits but which were necessarily executed partly or wholly in this country by reason of some of the parties to such instruments residing therein at the time of the execution (*a*). The intentional omission of this definition of 'property' in the Acts of 1879 and 1899 leads to the inference that an instrument executed in British India, though relating to property situated out of British India, should be stamped under this clause (*b*). Thus an instrument by which a lease of gold mining rights in a block of land situated in the Native state of Mysore with the machinery and buildings thereon was transferred to an English company by certain persons of whom some resided in British India and which after being executed by such persons as resided out of British India was received in British India and executed by the person residing therein was held to be liable to stamp-duty under s. 5, clause (a) of Act I of 1879 corresponding to this clause (*c*).

Similarly a deed of settlement partially executed in British India was held liable to Indian stamp duty, though it was intended to have effect in England and was to be partially executed there and although it was liable to English stamp duty (*d*). A conveyance of land in Australia executed in the United Kingdom was held to require a stamp (*e*).

An instrument partially first executed in England when the Act of 1869 was in force by the senior partner of an Indian firm and two other persons, which was subsequently signed by the other partners of the said firm in Madras and which related not to property in British India, but to things to be done in British India, was held to require an Indian stamp (*f*), though it bore

(*a*) Report of the Select Committee on the Stamp Bill of 1869 ; I. G. 16th August 1869

(*b*) Mad. B. P. No. 647, 11th April 1881.

(*c*) *Ibid.*; Mad. B. P. 690, 23rd April 1881

(*d*) Bom. Civ. Ref. No 54 of 1883

(*e*) *Re* Wright and In. Rev. Commrs. (1855), 11 Ex. 455.

(*f*) Oakes *v.* Jackson (1876), I L.R., 1 Mad. 134.

an English stamp; probably, because it fell under clause (1), section 4 of that Act. Such cases have now been specially provided for in clause (c) of this section (section 5 of Act I of 1879).

An agreement was held to be "made" in the United Kingdom within the meaning of s. 59, sub-s. (1) of the Stamp Act, 1891, if it was executed in the United Kingdom by a party to the agreement whose execution was required to make the instrument on the face of it complete. Thus, where an agreement in writing to sell the premises of a wholesale manufacturing business carrried on in Germany together with the goodwill of the business for a lump sum was executed by the vendor in Holland and by the purchaser in England, it was held that the agreement was "made" in England, but that the goodwill was "property locally situate out of the United Kingdom" and that the agreement was therefore not chargeable with the *ad valorem* duty (*a*). In this case the instrument was partially executed in Holland and partially in England, and was completed only when it was executed by the purchaser in England. Under this Act the question where the instrument was executed would seem to be immaterial. It is doubtful whether under this Act an instrument first executed partly abroad and subsequently partly in India would fall under clause (a) of this section, though it may fall under clause (c), if the instrument related to any property situate or to any matter or thing done or to be done in British India. So the English decisions (*b*) bearing on the construction of s. 59, sub-section 1 of the English Stamp Act, 1891 as to whether property is locally situate out of the United Kingdom will have no application in India, as instruments executed in British India, whether they related to property outside British India or not, are liable to duty, if they fall within the description contained in the schedule to this Act.

(*a*), In. Rev. Commrs. *v.* Muller & Co.'s Margarine Ltd., [1901] A. C. 217; affirming [1900] 1 Q. B. 310.

(*b*) Danubian Sugar Factory *v.* In. Rev. Commrs., [1901] 1 Q. B. 245; Smelting Company of Australia *v* In. Rev. Commrs., [1897] 1 Q. B. 175; In. Rev. Commrs. *v* Muller & Co.'s. Margarine Ltd, [1901] A. C. 217; [1900] 1 Q. B. 310; Urban *v.* Commrs. of In. Rev, [1913] 29 T. L. R. 141 and 476; Velazquez *v.* In. Rev. Commrs., [1914] 2 K. B. 404.

Clause (b).—Where a bill of exchange was drawn in the Isle of Man and sent to the payee in England and a copy of it was sent by the payee to the drawee who was also in England, with a request to be informed whether he would honour the bills, whereupon the drawee replied that he would, when funds came into his hands by a certain date, in the action brought on the bill it was held that the instrument which was a foreign bill of exchange did not require to be stamped, "as it was not presented for payment endorsed or transferred or otherwise negotiated in England," and was therefore admissible in evidence (*a*). The obligation to stamp a promissory note executed out of British India does not arise until it is accepted or paid or presented for acceptance, &c., that is, until any of the things mentioned in clause (b) of this section and in section 19 has been done with respect to it. So, it was held in a Madras case following *Griffin* v. *Weatherby*, that in a suit brought upon an unstamped promissory note executed out of British India with respect to which none of the things mentioned in clause (b) of this section and section 19 had been done, it was admissible in evidence without being stamped (*b*).

The Negotiable Instruments Act, XXVI of 1881, defines 'acceptor,' 'presentment for acceptance,' &c. thus:—

Acceptor.

"After the drawee of a bill has signed his assent upon the bill or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf, he is called the acceptor. (s. 7).

Presentment for acceptance.

"A bill of exchange payable after sight, must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn and in business hours on a business day. In default of such presentment no party thereto is liable thereon to the person making such default.

(*a*) Griffin *v.* Weatherby (1868), L. R., 3. Q. B., 753.

(*b*) Mahomed Rowthan *v.* Mahomed Husain Rowthan (1899), 22 Mad 337; Simlu Ebrahim Rowthan *v.* Abdul Rahiman Mahomed (1898), M. L. J. R. 182. It seems that in such a case the note does not require to be stamped even before a decree is passed upon it.

If the drawee cannot after reasonable search be found, the bill is dishonored.

If the bill is directed to the drawee at a particular place, it must be presented at that place ; and if at the due date for presentment he cannot after reasonable search be found there, the bill is dishonored.

Where authorised by agreement, a presentment through the post office by means of registered letter is sufficient. (s. 61.)

Presentment for payment.

" Promissory notes, bills of exchange and cheques, must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Exception.—Where a promissory-note is payable on demand, and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof (s. 64).

Negotiation.

" When a promissory-note, bill of exchange or cheque, is transferred to any person so as to constitute that person the holder thereof, the instrument is said to be negotiated (s. 14)

Indorsement.

"When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the " indorser " (s. 15)."

Clause (c).—Instruments executed out of British India:—The expression " relates to any property situate, or to any matter or thing done or to be done " in this clause was taken from the English Stamp Act. Under the English Act there is no provision exactly similar to this clause. What the English Act, s. 14 (4), provides is that any instrument relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done in any part of the United Kingdom, shall not be given in evidence or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force at the time when it was first executed (*a*). Though the above sub-section of the English Act imposes no liability to duty unlike this section of the Indian Act but merely attaches certain penal consequences to insufficient

(*a*) *See* Appendix B, p. clxv.

stamping, it was held that that sub-section may be referred to for the purpose of showing that instruments executed abroad are chargeable with duty when they relate to "any matter or thing done or to be done in any part of the United Kingdom" as well as when they relate to any property situate in the United Kingdom. Thus, where by a deed of 'apport' executed in France, property in France was transferred by one English company to another English company (the registered offices of both the companies being in England), the consideration for the transfer being shares in the latter company, which were to be issued, and delivered to the former company, in England, it was held by the House of Lords that the instrument was liable to duty on the ground that it related to a matter or thing to be done in the United Kingdom within s. 14, sub-s 4 of the English Stamp Act, 1891. (*a*) In this case, Lord Macnaghten observed :--

"Speaking for myself I have some difficulty in seeing why it should be assumed that this instrument does not relate to property situate in the United Kingdom. The Act speaks of the "instrument". The provision is not confined to the operative part of the instrument. It speaks of the instrument "as relating to" certain subjects. There is no expression more general or far reaching than that. This instrument relates to the capital of the new company out of which it was agreed that a specified number of shares should be appropriated and allotted to the old company. The share capital of the new company, if it was situated anywhere, was situated in England. In my opinion this instrument does relate to property situate in England. Be that as it may, it certainly relates to something to be done in England. It relates to the registration in the name of the old company of shares which were to be allotted in an English company as the consideration for the purchase of the French company (*b*).

(*a*) In. Rev. Commrs. *v*, Maple & Co. (Paris) Limited, [1908] A. C. 22, reversing the decision of the Court of Appeal in [1906] 2 K. B. 884, and the decision of Walton, J. in [1906] 1. Q. B. 591.

(*b*) Ibid. at p. 26. Upon this decision the following remarks are made in Halsbury's Laws of England, Vol. 24, p. 707:—"In that case the House of Lords held that the terms of the Stamp Act, 1891, s. 14 (4) showed that it was intended to include in the general charge certain conveyances executed abroad. It is submitted that the sub-section also shows that general words throughout the Act which impose a liability to duty or fines must also be read as subject to such limitation as would exclude the cases in which that sub-section would have no application. The difficulty as regards the imposition of fines suggested in the same case ([1906] 2 K. B. 884. C. A., *per* Fletcher Moulton. L. J., at pp. 847, 848) would thus be avoided."

"Situate in British India" means situate in British India at the time of the execution or making of the instrument (*a*). Hence, if a mortgage were made of property which at the time of execution of the deed was in England, the mortgage would not be subject to stamp duty, although subsequenty and before it took effect, the property might be conveyed into British India, for the question of stamp must depend upon the state of things existing at the time that the mortgage was made, and in such a case it was possible that the property mortgaged might never find its way to British India (*b*). So, it was held that a letter by which a chose in action (debt) was equitably assigned out of British India did not require a stamp where the chose in action was not in British India at the time of the assignment (*c*). A deed of settlement executed in foreign territory and relating to property both in and out of British India should be stamped not only on the portion of the property situated in British India but also on the value of the whole property settled (*d*).

Property situate in British India.

The words "or to any matter or thing done or to be done .....and received in British India" were first added by Act I of 1879. A power-of-attorney executed at Pondicherry in the name of one S. who was thereby authorised to present certain sale deeds for registration before a Sub-Registrar in British India and also to give transfer razinamas for the lands referred to in the sale deeds was ruled to be chargeable under clause (c) of this section (*e*). But, notarial acts verifying the execution of a power-of-attorney executed out of British India are not liable to stamp duty as they do not relate to any property situate or to any matter or thing to be done in British

Matter or thing done or to be done in British India

(*a*) Moran v. Mittu Bibi (1876), I L.R. 2 Cal. 58, 97.

(*b*) *Ibid*; cf. Megji Hansraj v. Ramji Joita (1871), 8 Bom. H.C.R. O.C. 169.

(*c*) Megji Hansraj v. Ramji Joita (1871), 8 Bom., H.C.R., O.C., 169.

(*d*) Bom. Ref. No. 54 of 1883, followed in Mad. B. P. No. 336, 5th April 1883.

(*e*) Mad. B. P. No. 1143, 27th March 1884.

India, but merely relate to the execution of instruments completed out of British India, though the powers-of-attorney relate to such things and are, as such, liable to duty (*a*).

The Stamp Acts XXXVI of 1860 and X of 1862 contained no provision for stamping documents executed out of British India, except bills of exchange. So, where an unstamped document comprising an assignment of the executant's interest under a will and also a power-of-attorney executed in Australia on the 26th May 1862 was sought to be used in 1890 at Madras, it was held that the document was not chargeable either under Act XXXVI of 1860 or Act X of 1862 with stamp duty and consequently no penalty could be levied under Act I of 1879 (*b*).

A document, called a finance agreement, was executed or intended to be executed between the Nilgiri Railway Co., one Richard Woolley, and the Union Debenture Co. (London), for the purpose of raising capital for the Nilgiri Railway, whereby *inter alia* the Debenture Co. undertook to advance to Wolley in certain instalments the sum of £220,000, being the amount of the debenture bonds of the Railway Co., issued to Woolley to enable him to raise the capital for constructing the Nilgiri Railway, on the debenture bonds being handed over to it (Debenture Co.), and it was also provided that as further consideration for the payments to be made by the Debenture Co. to the said Woolley, he should transfer to it 3,000 fully paid up shares of the Railway Co. of Rs. 100 each and that if Woolley should fail to furnish and equip the Railway, he should be liable to damages of a certain amount. This document was first executed by the Debenture Co. in England and was subsequently executed by Woolley in British India. The things to be done under the document, namely, the payment of money to Woolley and the delivery of debentures and shares to the Debenture Company were to be done in England. It was held that, though executed by certain parties out of British India, the document was liable

(*a*) Referred case No. 1 of 1879, M.H.C. ; Mad. B. P. No. 491, 22nd August 1887 ; From Board of Revenue, N. W. P. and Oudh to Commissioner of Stamps, No. 80/*Vs*-43, dated 1st March 1882.

(*b*) Ref. (1890), I. L. R. 14 Mad, 255.

to be stamped under the Indian Stamp Act as a bond, because it related to matters to be done in British India (*a*).

Vouchers for work done in British India fall under this clause, if executed in Mysore and received in British India, as they relate to a thing done in British India (*b*). Similarly receipts signed within the Mysore territory for interest due on Madras municipal debentures fall under this clause (*c*).

Foreign contracts.—As to the formal requirements of a contract, those which are demanded by the *lex loci contractus* or law of the place where it is made are sufficient and necessary to give it validity everywhere. Thus, if for want of a stamp, a contract made in a foreign country is void there, it cannot be enforced here (*d*). A statute declaring that, in the absence of a given form, the transaction shall be void, makes that form an essential requisite of the transaction. From statutes of that character must be distinguished those which preclude an action from being brought or evidence from being admitted unless some requirement has been satisfied. Statutes of the latter kind have force only if they are part of the *lex fori*. If the want of a stamp makes a document inadmissible in evidence according to the law of the foreign country where the document is made, the Courts of this country will admit it notwithstanding (*e*) The same principles are thus laid down in a Bombay case :—Whether a document is valid or invalid depends upon what the substantive law was at the time and place of its execution. If at such time, it was according to that law invalid there, it is and continues invalid everywhere and for all time. If, however, at such time, it is not invalid, but merely inadmissible in evidence according to the *lex fori* of the place of its execution. It is not and does not continue so inadmissible, except where and whilst such or

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(*a*) Mad. H. C., C. M. P. No. 522 of 1892.

(*b*) Mad. B. P. No. 216, 20th April 1892.

(*c*) Mad. B. P. No. 361, 6th July 1892.

(*d*) Bristow *v* Sequeville (1850), 5 Ex 275.

(*e*) James *v.* Catherwood (1823), 3 D. & R. 190; *Ex-parte* Melbourn (1870), L. R. 8 Ch. 64.

similar law is in force, its in admissibility like all other matters of procedure being regulated by the *lex fori* of the place where the suit is brought in which it is sought to be used (*a*).

Foreign revenue laws.—It is a general rule of law that the Courts of one State do not take notice of the revenue laws of another State (*b*). So, it has been held that it is not necessary for the Courts in India to consider whether a power-of-attorney issued in England but which is intended to operate in British India, complies with the fiscal arrangements of the stamp laws of England. It is sufficient if such a power-of-attorney is stamped according to the law of British India; *semble*, if such a power-of-atorney was intended to operate in England as well as in British India, it would not be invalidated so far as it was intended to operate in British India because the requirements of the Stamp law of England had not been fulfilled. It would be sufficient if it complied with the requirements of the Indian law (*c*).

As transactions between two independent States or Governments are acts of State, they are not governed by the Municipal law of either; consequently, a receipt granted by the Dewan of Travancore on behalf of that State to the British Government is not governed by the British Indian Stamp law and need not be stamped (*d*). Native States not being parts of British India, the Stamp Act does not extend to them. So copies of public documents in cases disposed of by Political Officers in Native States are governed by the law of those states (*e*).

Proviso (1).—The general exemption on behalf of Government' contained in Schedule II of Act I of 1879 is now inserted in the body of the Act as this proviso to the section (*f*).

'Government' is defined to include the Local Government and 'Local Government' means the person authorised by law to

(*a*) Vinayak Lakshman *v.* Mahadaji Damodar, Bom. P. J. 1873, p. 112.

(*b*) James *v.* Catherwood, *supra*.

(*c*) In the goods of Mac Adam (1895), 1, L. R., 23 Cal., 187.

(*d*) Mad. B. P. No. 3528, 19 Nov. 1883.

(*e*) Legal Remembrancer's opinion recorded in Bom G. O. No. 391 19th January, 1882.

(*f*) App. E., p. cccii.

administer Executive Government in the part of British India in which the Act or Regulation containing the expression operates, and includes a Chief Commissioner (*a*), Local Fund Boards (*b*), Municipalities (*c*), District Boards, Court of Wards (*d*) and other similar administrations do not fall within the meaning of the term 'Government.' But the proviso applies to cases where Government officers transact business on account of Local Funds (*e*). The Collector's action under section 323, C, P. C., 1882 (Sch. III, C, P. C. 1908) in connection with the Court of Wards does not fall under the general exemption provided here (*f*). A general receipt granted by the head of an office on the back of a pay abstract is not liable to stamp duty, the receipt being executed in this instance by an officer of Government in his official capacity and acting on behalf of Government (*g*).

Under the law in force prior to Act XVIII of 1869, no instruments to which the Government was a party were liable to duty, including those executed by a private party in favour of Government; but under the Act of 1869 and the subsequent Acts such instruments have been exempted only when under the other provisions of the Acts the obligation to bear the cost of such duty would rest upon the Government. Section 29 of this Act determines by whom the duty on any particular instrument is payable. Therefore, an instrument to which Government may be a party would not be exempt unless it is to be borne by Government under that section. For instance, in the case of a mortgage deed mentioned in clause (a) of that section, the duty is to be borne by the mortgagor and therefore a mortgage deed executed in favour of Government would not be exempt from

(*a*) General Clauses Act, X of 1897, s. 3 (21 & 29).

(*b*) Mad. B. P. No. 702, 12th March 1888.

(*c*) Mad. B. P. No. 290, 20th April 1889.

(*d*) Beng. Bd's Circ. No. 8 of Nov. 1881; Punjab Stamp Circ. No. 5 of 1884.

(*e*) Mad B. P. No. 673, 14th April 1881.

(*f*) Cf. From Board to Commissioners of Stamps N. W. P. and Oudh, No. 2056/Vs-137, 18th October 1881.

(*g*) I. G. R., No. 3807, 31st July 1862.

duty. The duty on a policy of insurance for Government stores being payable under clause (b) by the insured, *i. e.*, the Government, the instrument falls within the exemption (*a*). So, where the Government is the lessor, the duty on the lease is to be borne by the lessee, but the duty on the counter-part of the lease under clause (d) would be exempt. Duplicates of leases granted by Government are exempt from duty under this proviso (*b*).

Proviso (2)—This proviso was added by the Select Committee in order that the Indian law in this respect might conform to the law of the United Kingdom as stated in section 72 of the Merchant Shipping Act, 1894' (57 & 58 Vict. Cap 60) and the second general exemption at the end of the 1st schedule of the English Stamp Act, 1891 (54 and 55 Vict. Cap. 39) (*c*).

A company issued a debenture bond for 1000*l.* and interest which was a marketable security within the meaning of the first Schedule to the Stamp Act, 1891. The debenture was one of a series protected by a trust deed. It purported to create a charge upon three ships belonging to the company. These ships had previously been mortgaged by legal mortgages registered under the Merchant Shipping Acts to trustees for the debenture-holders. The trust deed contained covenants for payment of principal and interest and provisions for the maintenance and realization of the security usual in strust deeds. The debenture provided that the holder should have the benefit *pari-passu* with other debenture-holders of the mortgages. It was held that the debenture bond did not create any charge on the ships beyond that already in existence and that if it did create any charge its substantial object was to create not a charge but a marketable security, and it was therefore not an instrument for the disposition of a ship within clause 2 of the General Exemptions from all stamp duties contained in the first

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(*a*) Mad. B, P. No. 1293, 6th July 1881.

(*b*) Mad. B. P. R. No. 356 Mis. 20th Feb. 1904, and R. No. 756, Mis. 15th April 1904.

(*c*) App. E. p. ccxv.

schedule to the Stamp Act, 1891, but was liable to stamp duty as a marketable security under the same schedule (*a*).

Hamilton, J. in the Court below observed :—

"Accepting the view that the word "disposition" is quite general and comprehends every conceivable mode in which property or an interest in a chattel can pass by act of parties, I am unable to see that the debenture fairly comes within the description contained in clause 2 of the General Exemptions. . . . . I think the word 'for' is advisedly used in clause 2 of the Exemptions in the expression 'instruments for the .... disposition ..... of any interest ..... in any ship.' It points to an intention to exempt instruments of which the substantial object is the transfer or other disposition of an interest or property..... in a ship Even if the present debenture does transfer any interest, it does so only contingently, in an event which has not happened, and not as its substantial object. Such transfer is a comparatively small part of the object of the instrument and is quite distinct from the provisions relating to the creation and management of a debenture issue properly so called." (*b*)

As to *Interpretation of statutes*, see pp. 5—17, above.

As to *Construction of documents*, see notes to s. 35, *infra*.

Several instruments used in single transaction of *sale, mortgage or settlement.*

4. (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

(2) The parties may determine for themselves which of the instruments so employed shall for the purposes of sub section (1), be deemed to be the principal instrument:

(*a*) Deddington Steamship Company Ltd *v.* Commrs. of In. Rev., [1911] 2 K. B. 1001, affirming [1911] 1, K, B. 1378.

(*b*) [1911] 1 K. B, 1078, at p. 1089.

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

Cf. Act I of 1879, s. 6; 54 and 55 Vic. c. 39, s. 61.

The transaction of 'lease' which the corresponding section of Act I of of 1879 embraced has been omitted from this section. The provision that each of the subordinate instruments shall bear a fixed duty of one rupee was first introduced in Act I of 1879. Schedules annexed to a document must be regarded as forming part of the document itself and not as separate instruments employed to complete the transaction (*a*). But they were chargeable under Stamp Acts XXXVI of 1860 and X of 1862. The phrase "instruments employed for completing the transaction,' in this section does not include a power-of-attorney to register an instrument (*b*).

Several instruments cannot be said to relate to one and the same transaction within the meaning of the section, where the parties are different as also the terms, though they are executed in furtherance of one object (*c*). Thus, where a document called the finance agreement was executed between the Nilgiri Railway Company, one Woolley who was its agent and a Debenture Company, whereby the latter Company agreed to advance the amount of the debenture bonds of the Railway Company on their being made over to it, and secured such advance by providing among other things that a mortgage deed should be executed vesting the property of the Railway Company in three trustees, and such mortgage deed was executed as security for the total amount of the debentures in favour of the trustees, it was held that the finance agreement and the mortgage deed did not relate to one and the same transaction within the meaning of this section, the parties and the terms being different (*d*).

(*a*) Cf. 6 M. H. C. R., App. xxxvi.

(*b*) Mad. B. P. No. 3965, 20th Nov. 1884.

(*c*) C. M. P. No. 522 of 1892, M. H. C.; Mad. B. P. No. 131, 11th April 1894.

(*d*) *Ibid.*

Where two persons, after transferring their kanom (mortgage) rights by a document to a third party, intimated the same by letters to their respective jenmies (owners of the lands) and stated that they had no objection to the jenmi giving the renewal of the kanom to the transferee, it was ruled that these letters, being written after the completion of the transfer, were in no way essential to the completion of the contract or even incidental thereto and were therefore not liable to duty under this section (*a*).

A deed of absolute conveyance of certain immovable property was executed by H. to V. On the same deed of sale the undivided nephew of the executant endorsed his consent to the sale. It was held that the conveyance and the endorsement of consent were several instruments employed to complete the transaction and that the consent ought to have been written on a separate stamp paper of the value of one rupee (*b*).

Where in pursuance of the terms of a deed of marriage settlement executed out of British India, an instrument was executed by three persons transferring certain property in India to the trustees of the settlement, the latter instrument, being the principal instrument for completing the transaction so far as liability to Indian duty was concerned, was ruled not to come within the benefit of this section as a secondary instrument (*c*).

By a settlement funds were to be held by trustees on certain specified trusts for the benefit of the settlor's children. The settlement contained a provision that the trustees might at the request of any of the children revoke the trusts concerning that child's settled share, and resettle that share for the benefit of a certain specified class of persons. *Ad valorem* duty was paid on that settlement. Subsequently, at the request of the appellant

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(*a*) Mad. B. P. No. 763, 4th June 1880.

(*b*) In the matter of Hanmapa (1888), I. L. R. 13 Bom. 281. The opinion expressed in this case that the Collector ought to have refused to stamp the endorsement because it was made in contravention of section 13, has been impliedly overruled by *Prahlad Lakshmanrao Nikhare* v. *Vithu*, (1892), I.L R.. 17 Bom. 687.

(*c*) Mad. B. P. No. 730, 13th March 1883.

who was one of the children, and in contemplation of his marriage the trustees by deed revoked the trusts of the original settlement concerning his share, and declared that during his life it should be held on trust to pay the income to him and on his death should be transferred to the trustees of his marriage settlement, which was of even date, upon the trusts declared concerning the same in that settlement. By the marriage settlement to which the trustees of the original settlement were not parties, the appellant's share was settled on trusts which were within the power of resettlement given to the trustees under the original settlement. It was held, that the case was not one in which several instruments were executed for effecting a settlement of the same property within s. 106 of the Stamp Act, 1891, corresponding to the provision relating to settlement in this section (*a*). With regard to the point taken by the appellant that this case fell within s. 106 of the Stamp Act which provides that where several instruments are executed for effecting a settlement of the same property, one only of the instruments is chargeable with *ad valorem* duty, Collins, M. R., said :—

"I think that this point was effectively met by the answer given by the counsel for the Crown, who said that the section contemplated one transaction by way of settlement of property effected at the same time by several documents, not a series of documents effecting at different stages different dispositions with regard to settled property. I do not think the Legislature could have intended by that section to embrace the case of a settlement giving a power of revocation and appointment which is subsequently executed so as to effect what is really a fresh settlement. If the view of s. 106 contended for by the appellant were correct, there would seem to have been no need for the exemption contained in the schedule." (*b*)

Where one document is not merely a paper that is to be taken in connection with another that has been already stamped, in order to supply what is deficient in the former such that the two must be taken together in order to arrive at the original transaction that was come to, the former document requires to be stamped separately as a principal instrument. Thus, after a

(*a*) Russel *v.* In. Rev. Commrs. [1902] 1 K. B. 142, affirming [1901] 2 K. B, 342.

(*b*) *Ibid.* at p. 152.

complete lease has been executed, stamped and registered, if another document is prepared and executed with a view to *alter* the first, and substitute new terms so far as the rent is concerned, it requires to be itself stamped with the stamp provided for a lease (*a*). But where a document shows the consideration for another document and otherwise explains its terms and, by itself apart from the other document, does not form an agreement or constitution of title upon which any sum is sought to be recovered, and the two documents must be read together as parts of one and the same transaction, such document is not chargeable as the principal instrument (*b*). A deed confirming another deed duly stamped which became inoperative on account of a defect was held not to be a principal instrument (*c*). But a document purporting to rectify certain mistakes in the boundaries in a lease deed previously registered was ruled to require to be stamped as if a fresh lease were made, if the parties wished that such a document should be treated as part of the original lease (*d*).

Proviso.—This has been added to make it clear that the option given to the parties to elect is not to be used for the purpose of evading stamp-duty (*e*).

Instruments relating to several distinct matters

5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Cf. Act I of 1879, s. 7, para. 1; 54 & 55 Vict. c. 39, s. 4.

(*a*) Byjnath Dutt *v.* Mt Patsohee Dobain (1878), 20 Suth. W.R., 36.

(*b*) Dadoba *v.* Krishna (1879), I. L. R 7 Bom. 34, 37-38.

(*c*) Doe *d.* Priest *v.* Weston (1841), 2 Q. B., 249.

(*d*) Bengal Stamp Manual, p. 87. *Quære*, whether the subsequent document, if part of the original lease, related to a single transaction and did not require to be stamped as a separate principal instrument.

(*e*) App. E, p. cccii; *see* s. 13, Act XVIII of 1869, App. A.

Distinct Matters.—The section relates only to transactions so distinct in their nature as to be capable of being carried out by two or more instruments instead of one (*a*). The "distinct matters" referred to in this section mean matters of different kinds, as for instance, an agreement of service and a lease, which cannot blend into one, or at any rate are not intended or conceived by the parties that they can be regarded as merely parts of a single aggregate (*b*). An instrument contains or relates to distinct matters if it is made to answer several unconnected purposes (*c*). In section 14 of Act XVIII of 1869, the words "distinct considerations" were used instead of "distinct matters," and it was therefore held that a stamp for each category, upon a document falling within two distinct categories, was required only where there was what was called a distinct consideration (*d*). This decision would be applicable also under this section, and it has been held that where there is a unity of consideration, an instrument cannot be said to relate to "distinct matters" (*e*).

A test to determine whether an instrument relates to distinct matters is to ascertain the leading character of the instrument and see whether the other matters mentioned therein are several and distinct, or are only incidental and auxiliary to the main object. Therefore, where a document has several objects, some of which are merely auxiliary to the main one, the amount of stamp duty is to be measured by the principal object (*f*). Thus, where by the same instrument a third party stood as a guarantee for payment of rent by the lessee, it was held that a lease stamp was sufficient, the covenant by the surety partly being accessory to the lease and partly being the consideration for granting the lease (*g*). Again, in another case

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(*a*) *Per* Garth, C. J., Ref., Ex parte Hill and others (1881), I. L. R. 8 Cal 254, 259.

(*b*) *In re* Vithal Govind, Bom. P. J. 1888, p. 277.

(*c*) Addison on Contracts, 1880; Mad. B. P. No 3287, 15th Dec. 1881.

(*d*) Ref. (1876), I. L. R. 1 Mad. 138.

(*e*) Ref. (1901), I. L. R. 25 Mad. 3, at pp 6-7.

(*f*) Walker *v.* Giles (1848), 6 C. B. 662; cf. Ref (1901), I. L. R. 25 Mad. 3.

(*g*) Price *v.* Thomas (1831), 2 B. & Ad. 218; Pratt *v.* Thomas (1831), 4 C. & P. 554

declaration of trust as to stock auxiliary to such conveyance (*a*); where a lease under seal also contained a covenant to insure (*b*); where a surety became bound with his principal who bound himself to indemnify the surety against loss (*c*); where a transfer deed of shares also contained a covenant on the part of the purchaser to observe the rules of the company (*d*); where a deed of surrender of lease also contained a covenant on the part of the surrenderee to grant a new lease (*e*); where a mortgage deed contained a clause regarding conditions of repayment (*f*), or conditions explanatory of the terms of the mortgage (*g*); where a bond contained an agreement on the part of the executant to the effect that he would hold certain immoveable property of his available for mortgage and execute the requisite deeds when required to do so by the executee whom he further appointed his attorney for preparing, executing and registering such deeds (*h*); where a partition deed between brothers contained an agreement by them to pay their mother a fixed annual maintenance (*j*); where a policy of insurance against accident contained a provision as to the return of part of the premium upon death in certain events (*k*); where a promissory note contained a provision that no time given by the creditor to the principal debtor should affect his right against the surety (*l*); where provision is made in the document for payment of part of the consideration by instalments (*m*).

(*a*) Doe *d.* Hartwright *v* Fereday (1840), 12 Ad. & E., at pp. 26, 27

(*b*) Wilson *v.* Smith (1844), 12 M. & W. 401.

(*c*) Annandale *v.* Pattison (1829), 9 B. & C. 919; see also p. 118, above

(*d*) Wolseley *v.* Cox (1841), 2 Q. B. 321

(*e*) Doe *d.* Phillips *v* Phillips (1840), 11 Ad. & E., 796; cf. Rel. 1 L.R. 25 Mad. 3.

(*f*) Mad. B. P. No. 2102. 18th Sept. 1886.

(*g*) Mad. B. P. No. 263, 10th Feb. 1881

(*h*) Mad. B. P. No. 3287, 15th Dec. 1881.

(*j*) Mad. B.P. No. 1966, 10th June 1884

(*k*) General Accident Assurance Corporation *v.* In. Rev. Comms. (1906) 8 F. (Ct. of Sess.) 477

(*l*) Kirkwood *v.* Carroll, [1903] 1 K. B. 531

(*m*) Limmer Asphalte Paving Co. *v.* In. Rev. Comms., (1872), L. R. 7 Ex. 211, at p. 217.

If a lease or an agreement for a lease also contains an agreement on the part of the lessor to give the lessee the option of purchasing the premises, a lease stamp is sufficient as the sale is auxiliary to the lease (*a*).; except where the agreement to sell includes more premises than are comprised in the lease or the agreement for the lease, or relates to other premises, which is a case of two distinct transactions requiring a lease stamp and an agreement stamp (*b*). Similarly, an instrument of lease for a certain term with a covenant on the part of the lessor to renew the lease at the option of the lessee for a further term was held liable only to the duty payable on a lease for the term for which it was granted and not liable to the aggregate of the duties payable on the lease and on an agreement to give a lease for the further term (*c*) ; the option to renew being only ancillary to and forming part of the consideration for entering into the new lease. So, where the consideration for a lease consists partly of rent to be paid each month and partly of a sum equal to a month's rent paid in advance and repayable at the end of the lease, the instrument, relates to only one matter, namely, the lease and not to two distinct matters (*d*). But if a lease reserves rent for a house and distinct rent for furniture and fixtures, it relates to distinct matters (*e*).

If a lease also contains a guarantee by a third party as a surety for the payment of the rent, the guarantee is auxiliary to the lease and a lease stamp is sufficient (*f*) ; but if the guarantee refers to the payment of the price of goods and chattels covenanted to be bought and sold, or any matter not ordinarily or necessarily incident to the lease, there must be an agreement stamp as well as a lease stamp. Where by a written contract S. let to A. a public house, from year to year at a certain rent, and A.

(*a*) Worthington *v.* Warrington (1848), 17 L.J., C.P., 117 ; cf. I.L.R. 17 Cal. at p. 548.

(*b*) Lovelock *v* Franklyn (1846), 8 Q. B., 371.

(*c*) Ref. (1901), I. L. R. 25 Mad., 3.

(*d*) Ref (1902), I. L. R. 26 Mad. 473.

(*e*) Coster *v.* Cowling (1831), 7 Bing. 456.

(*f*) Price *v.* Thomas ; Pratt *v.* Thomas ; *supra*, p. 147.

agreed to buy of the plaintiff all the beer, &c. which should be consumed on the premises during the time, and to pay 30*l.* in liquidated damages for every barrel bought from any other person, and at the end of this instrument was written "and it is further agreed by O. (who was not previously made party to the contract) "that he will hold himself responsible for any amount of money which might become due from A. to S, that is to say, to the amount of 36*l.*", it was held in a suit by S. aginst O. on the guarantee that an agreement stamp was necessary in addition to a lease stamp (*a*).

A contract for or relating to the sale of goods comprised in bought and sold notes, each being signed by the brokers, which contain a provision to refer disputes to arbitration, is chargeable with a duty of one anna on each broker's note under Article 43 of the Stamp Act, and not with a duty of eight annas as an agreement to refer the disputes to arbitration, as the agreement to refer any dispute whatever arising out of the contract to arbitration is a part of the contract itself and not a "distinct matter" within the meaning of s. 5 of the Act (*b*). It was also subsequently held that the practice of stamping bought and sold notes relating to a contract for the sale of goods and containing an arbitration clause with one anna stamp was not invalid (*c*).

There may be a variety of stipulations and engagements entered into at the same time by divers parties forming the several parts of one contract, together constituting one transaction and requiring consequently but one stamp (*d*). Thus, where indentures of apprenticeship were written on a single paper dividing a seven years' binding into two distinct periods

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(*a*) Wharton *v.* Walton (1845), 7 Q.B. 474; *Per* Patteson, J, "This is not joining in the principal covenant, as the defendant had done in *Price* v. *Thomas*, but a separate thing, a distinct agreement by the defendant to guarantee the payment of money."

(*b*) The Bombay Co., Ld. *v.* The National Jute Mills Co, Ld. (1912), I.L.R 39 Cal 669.

(*c*) Baijnath *v.* Ahmad Musaji Saleji (1912), I.L.R 40 Cal. 219, on appeal, reversing the decision of Fletcher, J, in Hurdwary Mull *v* Ahmad Musaji Saleji (1908), 13 C. W. N. 68.

(*d*) Rex *v.* Louth (1828), 8 B. & C. 247; Stead *v.* Liddard, 8 Moore, 2.

to be served with two different masters and containing separate covenants with the several masters, they were held to require only a single stamp (*a*).

The concurrence of several parties to one and the same lease does not make it a multifarious document within the meaning of this section (*b*). A deed of lease for 999 years recited that the leased properties belonged to the old company in liquidation, that they were assured to trustees to secure a debenture loan, that the old company agreed to transfer their interests to the new company, that the new company had agreed to transfer to S. the coal mining rights in the said properties for a certain sum for the said period and subject to the payment of the rent and royalties expressed therein, and that S. agreed with P. to transfer to it all the mining and other rights subject to the same condition for an increased sum. The debenture loan had been discharged but there had been no reconveyance, and out of the trustees one alone survived. To carry the last agreement between S. and P. into effect, the concurrence in the lease (1) of the surviving trustee, (2) of the old company and its liquidators, (3) of the new company and (4) of S. were obtained. It was held that the instrument was a single lease and that the agreement between the new company and S. did not require to be stamped also as a lease, on the ground that the concurrence which it was thought desirable to obtain of the several persons other than the lessor did not alter the character of the lease or the nature of the transaction (*c*).

If the instrument comprises or relates to several distinct matters, the fact that all such matters are grouped together, and the instrument is signed at one and the same place by all the executants, will not save it from being chargeable with the aggregate duty payable in respect of all such matters. If, on the other hand, the matter is single, the fact that the several executants signed separately, and wrote separate endorsements reciting their liability, will not multiply the duty (*d*). A promissory note was to the following effect:—"The compliments of

(*a*) Rex. *v.* Louth, *supra*; cf. Hogarth *v.* Penny (1845), 21 M. & W 495.
(*b*) *In re* Parsea Collieries, Ltd. (1910), I. L. R. 37. Cal. 629.
(*c*) *Ibid.* (*d*) Musa *v.* Kahan, No. 102, P. R., 1895.

A. and M. to K.; Rs. 1,440-3-0 are due on account of past promissory notes. This money we shall pay you. This note is written on a stamp of one anna in the presence of K.R., R.N. and T.D. on 22nd Magh 1946 by A." There was no attestation of the witnesses named in the note, and though the note purported to be on behalf of A. and M., only the signature of A. was affixed below. Beneath the signature of A. were added the following words:—"I, M., wrote a promissory note on account of Mr. H.P.; that will be paid without objection. Written by M. Half of the amount of the promissory note is truly due by me." To these words the signature of M. was affixed. It was held that there was only a single document and that M.'s writing above his signature related to the same matter as A.'s portion and did not require a separate stamp to make M also liable on the note (*a*).

A person conveyed his tenant-right in certain land to three persons who purchased in three equal shares. It was held that the conveyance was a single transaction and that there were not three distinct matters within the meaning of this section (*b*).

Several matters constituting distinct transactions.

Several matters set forth in one instrument were held chargeable in respect of each in the following cases:—Where by one and the same deed there was a conveyance of freehold lands and a good will and a transfer of the interest secured by leases (*c*); where the mortgagor relinquished his title to the mortgaged property and agreed to pay the Government assessment until the transfer of the land to the name of the mortgagee in the Collector's books be effected (*d*); where though there may be cases in which the mere appointment of trustees at once transfers the trust property, the appointment and vesting were made under a power given by a statute (*e*); where a power-of-attorney contained

(*a*) Musa *v.* Kahan, p. 153, above

(*b*) Bengal Board's C. O. No. 10 of February 1909; Bengal Stamp Manual, p. 87.

(*c*) Ref. (1895), I. L. R. 23 Cal. 283.

(*d*) Sinapaya *v* Shivapa (1891), I L. R. 15 Bom. 675.

(*e*) Hadgett *v.* Commrs. of In. Rev. (1878), 3 Ex. D., 46; cf. Ref. (1887), 11 Mad. 216.

a clause by which the executant promised to pay the agent a specified remuneration (*a*); where a conveyance contained a provision that the grantees should hold the property conveyed as security for a debt upon the terms of another mortgage-deed (*b*). Where a document contained an acknowledgment of the receipt of the prize money by a subscriber to a chit or kuri fund and also a mortgage of his property as security for the payment of the balance of subscription due to the fund, it was held that it required to be stamped both as a receipt and a mortgage (*c*). So, a document whereby the managing member of a kuri association mortgaged his property for the repayment on fixed dates of the instalments due by him and for the due performance of his functions as manager, was held to be a security-bond as well as a mortgage-deed, in view of the fact that he filled two distinct characters, one as a member of the association who had obtained a loan and the other as manager (*d*).

Where four residuary legatees, of whom two were executors, by a deed made in pursuance of an arrangement for specifically dividing amongst them certain parts of the testator's personal estate, transferred and released to one another shares in nine companies forming part of the residuary estate, so as to vest in each of the four a portion of the share in each of eight of the companies and in one of them all the shares in the ninth company, it was held that the deed required only four transfer stamps (*e*).

(*a*) Letter from the Chief Commissioner, C. P., to Superintendent of Stamps, No. 5884/808, 6th Oct. 1888.

(*b*) Suffield (Lord) *v.* In. Rev. Commrs., [1908] 1 K. B. 865.

(*c*) Mad. B. P. No. 88, 15th March 1898; superseding Mad. B. P. No. 280, 26th July 1894.

(*d*) Mad. B. P. No. 1642 Mis., 9th November 1908.

(*e*) Freeman *v.* Commrs. of In. Rev. (1871), L. R. 6 Ex. 101. In this case it was argued that there was a transfer to each of three persons of shares in eight separate companies and to one person of shares in nine companies and that there were therefore thirty-three separate transactions or transfers; Kelly, C. B. and Pigott, B., held that four transfer stamps were required, while Martin, B., held that seventeen transfer stamps were required.

Several subject-matters and parties

If several leases are granted to different lessees(*a*), or several surrenders of leases (*b*), or several releases of separate causes of action (*c*), are made to different parties, or several annuities are granted by one deed engrossed on one piece of parchment, separate stamps are required; but if there be several leases of different properties to one lessee(*d*), or a release of several causes of action against one releasee or one joint cause of action against several persons jointly liable (*e*), or the grant of one annuity only payable in different proportions to different individuals (*f*), one stamp would suffice.

Community of interest

"If the interest of the parties relates to one thing which is the subject-matter of the instrument, or, in other words, if the instrument affects the separate interests of several and there is a community of the same subject-matter as to all the parties, there a single stamp will be sufficient (*g*)." Thus, where a deed recited that the executants had encroached upon a common and were in possession of their several encroachments, that they each had relinquished and conveyed their respective interests therein to certain persons, it was held that, although every person had a separate interest in respect of his own encroachment, there was a community of interest in all the conveying parties and that only one stamp was necessary (*h*). But it was pointed out in a Madras case (*j*), that the provision of the statute under which this decision was passed was expressed with much less distinctness than the modern English Stamp Acts which contain a provision similar to that of section 5 of the Indian

(*a*) Doe *d.* Copley *v.* Day (1811), 13 East 241.

(*b*) Reg *v.* Everdon (1846), 16 L. J., Q. B. 18.

(*c*) Rex. *v.* Reeks (1726), 2 Ld. Raym 1445.

(*d*) Blount *v.* Pearman (1834), 1 Bing. N C 408.

(*e*) Perry *v.* Bouchier (1814), 4 Camp. 80.

(*f*) Cook *v* Jones (1812), 15 East 237, at p 243.

(*g*) Phillips on Evidence, p. 445.

(*h*) Doe *d.* Crott *v.* Tidbury (1853), 14 C B 304

(*j*) Ref. (1900), I.L.R. 24 Mad. 176.

Stamp Act, and a doubt was expressed whether the same conclusion would be arrived at on a similar instrument under the present English Stamp Law. So, it was held in the last mentioned case that an agreement which was to be executed by several land-holders of a village in favour of a company intending to search for and work minerals in their lands, with regard to the separate property of each land-holder, dealt with several distinct matters and should be stamped with the stamps of as many agreements as there were land-holders who were made parties to the agreement (*a*). On the other hand, where ten mirasidars of a village executed an instrument authorising the person therein mentioned to recover for them from their former agent the perquisites and other communal income appertaining to their mirasi rights, &c., it was held that a single stamp was sufficient (*b*).

But where the parties have separate interests in several subject-matters, there ought to be a separate stamp for each (*c*) So, a power-of-attorney executed by a number of persons in favour of a person authorising him to appear on their behalf in a number of revenue suits in which the executants were concerned with their respective landlords, was held to require the stamp of as many separate instruments as there were executants (*d*). Similarly, where sixteen persons borrowed a quantity of rice and executed a bond for the debt, showing how much rice had been borrowed by each of them, while they did not bind themselves to repay the entire debt jointly and severally, it was held that the instrument should be regarded as comprising sixteen distinct contracts within the meaning of this section (*e*). But where a document purporting to be an agreement for the sale of fish was executed by several persons (residents of a village) in order to raise a loan of Rs. 250 for a common purpose, though the fish was to be supplied by each in a specified

(*a*) Ref. (1900), I L. R. 24 Mad. 176.

(*b*) Ref. (1891), I L.R. 15 Mad. 386; cf. Ref (1886), I.L.R. 9 Mad. 358: Allen *v* Morrison (1828). 8 B. & C 565

(*c*) *See* Ref (1900), I.L.R. 24 Mad. 176.

(*d*) Ref. (1892), 2 M.L.J R 178; Mad. B.P. No. 2222 29th July 1885; Beng. Bd.'s Circ. No. 7 of Oct. 1888.

(*e*) Shabudin Mahomed *v.* Hirnak Rajnak (1885), I.L.R. 10 Bom. 47.

manner in discharge of the amount, it was held that the document was not an agreement comprising or relating to several distinct matters (*a*). Where many ryots holding separate pattas or licenses for manufacturing salt executed a general power-of-attorney in the name of a person authorising him to sell all the salt manufactured by them and to receive the kudivaram amount whenever it fell due, it was held that as the parties executing the power of attorney had separate interests and each authorised the agent to act on his behalf, separate documents were required (*b*).

In *Bowen* v. *Ashley* (*c*), where certain musicians became severally bound in the penalty of £100 to attend the meetings of a musical society, it was held that one stamp was sufficient. In this case, Mansfield, C.J., observed;—"This was one transaction; it was not intended that one of these musicians should be bound unless all were bound; the engagement would never have been made with one of them that he should perform by himself singly; but the binding of all of them to the same object was the consideration of the obligation entered into by each singly." In the same case the Chief Justice further observed :—" Where a debtor compounds with his creditors and where each creditor signs the same deed covenanting either to give further day of payment or to take a certain sum as a composition, every covenant is in fact a separate covenant, and the several deed of each creditor who signs the deed; but the whole being only one transaction, a separate stamp is not required." The principle of this decision has been applied in a number of cases and it has been held that an agreement by several persons to do a certain thing in furtherance of one common purpose requires but one stamp although the parties may have several interests and may subject themselves to separate liabilities. Thus an agreement by three persons to indemnify a fourth to the extent of £ 50 each, to be paid severally (*d*); an agreement to contribute to

(*a*) Rodrigues *v.* Fernandez (1908), 19 M. L. J. R. 35.

(*b*) Mad. B. P. No. 4930, 6th Nov. 1877; No. 222, 29th July 1885.

(*c*) (1805), 1 B. & P., N.R., at p. 278.

(*d*) Ramsbottom *v.* Davis (1839), 4 M. & W. 584.

the cost of making a clock (*a*); a conveyance by three persons of a block of shares in which their interests were several (*b*); a bill of sale by the crew of a privateer of their shares in prize money (*c*); an agreement by several underwriters to refer a dispute on a policy (*d*); a letter of attorney signed by members of a mutual insurance club (*e*); a release to an administrator by two next of kin (*f*).

Obligation implied by law.

An undertaking to perform a duty which the law implies need not be stamped. Thus, under the ordinary law of mortgage (*g*), the mortgagor is bound so long as the equity of redemption remains with him, to indemnify the estate against expenses incurred by the mortgagee in defending the title to the mortgaged property; so that, where a mortgage bond contained stipulations under which the mortgagor engaged to repay the mortgagee any costs he might incur in suits brought against him by the mortgagor's co-sharers and also any debts charged upon the mortgaged property which the mortgagee might pay, it was held these stipulations did not create any fresh obligations and only tended to maintain in favour of the mortgagee the original security which was the purpose of the instrument and required no additional stamp duty (*h*); so a mortgage deed containing an attornment by the mortgagor to the mortgagee (*j*), or provisions making expenses reasonably incurred in preserving the security a charge upon the property mortgaged (*k*). A mortgage-deed which authorises the mortgagee to add to the

(*a*) Davis *v.* Williams (1811), 13 East 232.

(*b*) Wills *v.* Bridge (1849), 4 Ex. 193.

(*c*) Baker *v.* Jardine (1784), 13 East 235 (*n*).

(*d*) Goodson *v.* Forbes (1815), 6 Taunt 171.

(*e*) Allen *v.* Morrison (1828), 8 B. & C. 565.

(*f*) Thomas *v.* Bird (1841), 9 M. & W. 68.

(*g*) Transfer of Property Act, section 65.

(*h*) Damodar Gangadhar *v.* Vamanrao Lakshman (1885), I. L. R. 9 Bom. 435.

(*j*) Walker *v.* Giles (1848), 6 C. B. 662.

(*k*) Suffield (Lord) *v.* In. Rev. Commrs., [1908] 1 K. B. 865. In this case the several authorities are discussed as to what matters are distinct and what matters are ancillary.

principal money secured all expenses incurred by him, in exercise of the power of sale and leasing given by it (*a*), or for the renewal of the lease, if the mortgage be of a leasehold property (*b*), or for the payment of rates and taxes imposed by law (*c*), does not require an additional stamp where the deed is sufficiently stamped with respect to the principal money secured by it; for the mortgagee would be entitled to recover by law these expenses independently of any stipulation for paying them contained in the deed itself (*d*). An assignment of a policy of assurance to secure a debt with a proviso for redemption on payment of principal and interest is a mortgage (*e*); and where the debtor making such an assignment covenanted to pay to the insurance company the premiums and agreed that in case of default the creditor might do so and the sums so advanced should be considered as principal and bear interest and the policy should be a security for payment and should not be redeemed without the payment of the sums so advanced, it was held that the assignment was sufficiently stamped on the principal sum secured (*f*).

Again, a conveyance must be taken to include the usual covenant for title which the law implies, and such covenant is not to be considered as constituting a separate indemnity bond (*g*). So, an undertaking of a solicitor to recover the value of bills handed over to him by a client need not be stamped (*h*). Where an instrument purporting to be a deed of sale contained also stipulations to the effect that the property conveyed by the instrument together with other property of the vendee, was

(*a*) Doe *d.* Scruton *v.* Snaith (1832), 8 Bing. 146.

(*b*) Wroughton *v.* Turtle (1843), 11 M. and W. 561. *See* also 54 & 55 Vic. ch. 39, s. 88 (3), Appendix B.

(*c*) Doe *d.* Mercerон *v.* Bragg (1838), 8 Ad. & E, 620; Mad. B. P. No. 258, 22nd April 1891, superseding No. 669, 18th May 1880; *see* section 76 (e), Transfer of Property Act, IV of 1882.

(*d*) *See* Transfer of Property Act, IV of 1882, s. 72.

(*e*) Caldwell *v.* Dawson (1850), 5 Exch. 1.

(*f*) Lawrence *v.* Boston (1851), 7 Ex. 26. *See* 54 & 55, Vic. ch. 39, s. 88 (3), App. B.

(*g*) Ref. (1876), I L R 1 Mad. 133.

(*h*) Langdon *v* Wilson (1828), 2 M & Ry, 10

to be held as security for the amount of the balance of purchase money to be paid in instalments, and that the last instalment was not to be paid unless the vendor redeemed a prior encumbrance on the property sold, it was ruled that the instrument did not evidence a sale and a mortgage, as under section 55, clause (1) (g) and clause (4) (b), of the Transfer of Property Act the seller was bound to discharge the prior encumbrance and was also entitled to a lien on the property sold for his unpaid purchase money, and the express mention of the fact that the property sold was to be held as security for the unpaid purchase-money could not therefore affect the character of the instrument (*a*); but as other property of the mortgagor was also made security for the unpaid purchase-money, the instrument could be treated as evidencing also a mortgage.

Whether instrument bearing stamp for one of several matters admissible in evidence.

Where an instrument contains two distinct matters and has a stamp sufficient to cover only one of such matters, a question may arise whether the instrument should be considered as not duly stamped, and as such is inadmissible in evidence even in respect of the matter covered by proper stamp. The circumstance that the document is unstamped in respect of one matter will not prevent it from being given in evidence of the other matter with regard to which it may be duly stamped (*b*). Whether the stamp was applied to the one or the other thing is a matter of evidence. Where an instrument contains a written contract of demise in its general terms with a several operation with respect to the different tenants who sign it for different estates at different rents set against their signatures, and one stamp appears upon the paper, it is matter of evidence to which contract such stamp applies (*c*). So it has been held also in other cases upon the language of the earlier English statutes that if the number of the stamps is less than what is required and that if it nevertheless be possible for the Court to determine what are the instruments to which the stamps are

(*a*) Mad. B. P. No. 107 dated 12th May 1899, superseding. B. P. No. 496, 23rd Nov. 1897.

(*b*) Cf. Anon. Salk, 162; Addison on Contracts, p. 1380.

(*c*) Doe *d.* Copley *v.* Day (1811), 13 East, 241

applicable, the Court may admit those instruments (*a*) Where an instrument contained several distinct contracts and therefore required several stamps, it was held under the Indian Stamp Act of 1862 that it might be used as evidence of the one contract for which it was stamped, although it was not admissible as evidence in respect of the contracts for which it was not stamped (*b*). In *Chinmaji* v *Ranu* (*c*), a case decided under section 14 of Act XVIII of 1869, it was held that, when an instrument consisting of two parts—the first containing a promise to pay a certain sum of money, and the second a further promise to give a quantity of grain—had a stamp sufficient to cover only the promise to pay money, the plaintiff in the suit brought upon the instrument might abandon the agreement for payment of grain and might recover the money. This case was decided under the first paragraph of section 14 of Act XVIII of 1869, which corresponded to the first paragraph of section 6 of the present Act. In this case the highest duty with which the instrument was chargeable, namely, the duty of eight annas for the agreement to pay grain, was not paid, yet the Court held that the instrument could be admitted in evidence to prove the transaction for which the lower duty of two annas actually paid was sufficient. As to how far the above English decisions on the earlier English statutes and the decisions under the earlier Indian Stamp Acts would be applicable with reference to the language of s. 35 of the present Stamp Act which provides that a document shall not be admissible for any purpose unless duly stamped, *see* notes under, s. 35, *infra*.

Instruments coming within several descriptions in Schedule I.

6. Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder

(*a*) R. Reeks (1726), 2 Ld. Raym. 1445; Powell *v.* Edmunds (1810). 12 East. 6; Evans *v.* Pratt (1842), 4 Scott (N. E.), 378; cf. Forsyth *v.* Jervis (1816), 1 Stark 137; Perry *v.* Bouchier (1814), 4 Camp 80.

(*b*) *Per* Peacock, C J., Luchmeeput Singh Doogur *v.* Mirza Khyrat Ali (1869), 12 Suth. W. R., (F B), 11, at p. 12.

(*c*) (1879) I L. R. 4 Bom 19.

are different, be chargeable only with the highest of such duties :

Provided that nothing in this Act contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

Cf. Act I of 1879, s. 7, para. 2.

This section and the preceding section formed one section, *viz.*, s. 7, of Act I of 1879. The rule laid down in this section that whenever an instrument falls within two categories it is chargeable with the higher duty is made expressly subject to the provisions of s. 5.

Where the Legislature has imposed a particular rate of duty on a specific and well defined class of instruments, it is to be inferred that the intention was that that duty and no other should be charged on all ordinary instruments of that class, even although there may be another category wide enough to bring such instruments within its scope (*a*).

In the case of an instrument which was partly a lease and partly an usufructuary mortgage, whereby, in consideration of a former loan being allowed to continue and of an additional loan being made by H. to a zamindar, the zamindar granted a lease of certain properties for twenty years upon terms which secured to the lessees the repayment of the whole sum with interest by yearly instalments, and at the same time secured to the zamindar a very substantial share in the usufruct of the property, it was held that the loan was the consideration for the lease, and the lease the consideration for the loan, and that neither part of the arrangement would have been complete without the other and that the instrument could not be said to relate to two distinct matters but was one falling within this section, the instrument being one which answered two of the descriptions mentioned in the first schedule, *viz.*, a lease and a mortgage, and was accord-

(*a*) Halsbury's Laws of England, Vol. 24, p. 711.

ingly chargeable as a mortgage only (*a*). Similarly, a document whereby a zamindar leased certain land in his village at a certain rent, and which contained an agreement by the lessees hypothecating certain property belonging to them for the purpose of securing the payment of the rent, was held to fall within this section, as the matter to which the instrument related was the terms upon which the lessor let the land and the lessees took it and as the mortgage was not a distinct matter from the lease (*b*). But where a kanom (Malabar mortgage) renewal deed fixed the amount of the kanom at Rs. 75-0-0 and the stipulated rent inclusive of Government assessment and recited that a sum of Rs. 33-12-0 had been received by the jemmi (owner) from the kanom mortgagee in the shape of present, on a reference by the Board of Revenue who were of opinion with reference to the decision in Ref. under Stamp Act, I. L. R 8 Cal. 254 (*c*), that the Malabar kanom deed which was a mortgage for a limited term as well as a lease should be treated as a mortgage as well as a lease within the meaning of s. 6 of the Act, it was held that the instrument should not be treated as both a mortgage and a lease and dealt with under this section, but was only a mortgage and that the "present" of Rs. 33-12-0 was a part of the consideration for the execution of the mortgage (*d*).

A document whereby a person borrowed a certain sum of money and agreed to deliver to the lender on a certain date unrefined sugar (agricultural produce) and as collateral security hypothecated the produce of a field of his, was held to answer the description of a bond as well as that of a mortgage deed and that it fell within this section (*e*).

A document whereby the executant, an agricultural laborer, acknowledged having received an advance of twenty-nine rupees

(*a*) Ref. (1881), I L R. 8 Cal. 254 at p. 258

(*b*) Ref (1894), I L. R. 17 All 55.

(*c*) *See* f. n. (*a*), above.

(*d*) Ref. Case No. 1 of 1903, M. H. C.

(*e*) In the matter of Gajraj Singh (1884), I. L R. 9 All. 585; C.P. Circ. No. 11, 31st October 1887; From Bd of Rev, N. W. P. & Oudh to Comm. of Stamps, 4th Nov. 1884, No. 523/*Vs*-103; Mad. B. P. No. 2063, 18th July 1883.

from the person in whose favor the document was executed, and in lieu of the interest due thereon, and in consideration of certain grain allowances promised by the latter, he bound himself to perform agricultural labor for a term not specified and not to quit service in any year before the harvest was over and in case he failed to perform his work satisfactorily or quitted service before the harvest time in any year, certain immoveable property belonging to him and specified in the document, the possession of which he retained, was made liable for the repayment of the advance, was ruled to be both a deed of mortgage and an agreement not otherwise provided for and therefore chargeable with the higher duty of eight annas (*a*).

Where by an instrument which recited that B. had rented from A. a room in a certain house at a monthly rent of Rs. 5, and that B. had since advanced to A. a sum of Rs. 500 repayable with interest at the rate of one per cent. per mensem, it was provided that the interest on the loan should be deducted from the monthly rent of Rs. 5 payable by the lessee for the occupation of the room, that the principal should be repaid by the lessor in instalments of Rs. 50 or more, and that so long as the lessor should fail to repay the money advanced by the lessee, the latter might remain in possession of the room and the lessor should not be able to eject him or increase the rent, it was held that the instrument was a lease and a usufructuary mortgage within the meaning of s. 5 of this Act (*b*).

One of the clauses of an instrument by which one party to the instrument bound himself, in the event of a breach on his part of any of the conditions of the instrument, to pay the other party thereto a penalty of Rs. 5,000 was held to be a bond, and such instrument, if that clause were not so regarded, being an agreement chargeable with a duty of eight annas, was held by the Allahabad High Court to be chargeable under s. 7 of the Stamp Act I of 1879 (corresponding to s. 5 of this Act) with

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(*a*) Mad. B. P. No. 424, 11th March 1881; Mad. B. P. No. 588, 20th Feb. 1884.

(*b*) Bengal Board's, C. O. No. 5 of June of 1905.

the duty leviable on a bond for Rs. 5,000 (*a*) But the other High Courts have taken the view that an instrument containing a covenant to do a particular act the breach of which is to be compensated in damages is an agreement and not a bond (*b*).

An instrument in which the executant after reciting that she adopted the minor son of one R, proceeded to state that she had given certain property valued at Rs. 200 to the minor, and directed that as long as he remained a minor, R. should manage the property and maintain both the executant and the minor, and that in case of his failing to do so he should pay her a certain quantity of paddy annually, was ruled to fall under the category of both an "instrument of gift" and a "declaration of trust" and to be therefore chargeable with the higher duty under this section (*c*).

Where a person who traded in bracelets sold them by a document which contained a provision that the vendee should pay the rent of the shop in which the business was carried on to the vendor until an agreement should be executed in favor of the vendee, it was held that the document required to be stamped both as a conveyance and a lease under s. 5 of the Act and not as a mere agreement (*d*).

Where the shareholders of A. company which was then in course of being voluntarily wound up entered into an agreement in writing with B. company, whereby it was agreed that the shareholders of A. company should respectively exchange their shares in the company for the shares in B. company and that upon the latter company allotting to them the shares to which they were respectively entitled, they should henceforth hold their respective shares in the A. company in trust for B. company, it was held that the agreement was both a declaration of trust and a conveyance on sale and was chargeable with higher duty as a conveyance on sale (*e*). By an agreement the

(*a*) Reference (1880), I. L. R. 2 All. 654, Stuart, C J., *diss.*

(*b*) *See* notes, p. 37, above.

(*c*) Mad. B. P. No. 2678, 11th Nov. 1881,

(*d*) Ref. case No. 3 of 1904, M. H. C.

(*e*) Chesterfield Brewery Co. *v.* In. Rev. Commrs., [1899] 2 Q. B. 7, approving of the view of Channell, J., in the next cited case, [1898] 1 Q.B. 226.

vendor agreed to sell the goodwill of the business of an hotel proprietor and licensed victualler and the lease of the hotel in which the business was carried on. The vendor was to shew a good title to the lease and, in the event of the consent of the landlords to the assignment of the lease not being obtained, it was provided that the vendor should at the option of the purchasers execute a declaration of trust of the leasehold premises in their favor. The consent of the landlords not having been obtained, a declaration of trust stamped as such was executed in favor of the purchasers. The declaration of trust was held to require to be stamped as a conveyance (*a*).

A foreign Government issued certain documents called "Gold coupon treasury notes" with a promise to pay principal and interest to bearer at fixed dates either abroad, or at the option of the holder in London and there was evidence that the notes were saleable on the London and other Stock Exchanges; it was held that the notes being in fact both promissory notes and marketable securities within the Stamp Act, 1891, they were liable to the higher duty imposed by the Act upon marketable securities (*b*).

See notes to section 5, *ante*.

Policies of sea-insurance.

7. (1) No contract for sea-insurance (other than such insurance as is referred to in section *506* of the Merchant Shipping Act, *1894*), shall be valid unless the same is expressed in a sea-policy.

(2) No sea-policy made for time shall be made for any time exceeding twelve months.

(3) No sea-policy shall be valid unless it specifies the particular risk or adventure, or the time, for

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(*a*) Per Channell, J., West London Syndicate *v.* In. Rev. Commrs., [1898] 1 Q. B. 226, at p. 240.

(*b*) Speyer Brothers *v.* In. Rev. Commrs., [1908] A. C. 92, affirming [1907] 1 K. B. 246.

which it is made, the names of the subscribers or underwriters, and the amount or amounts insured.

(4) Where any sea-insurance is made for or upon a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

Cf. Act I of 1879, s. 7 A; 54 & 55 Vic. c. 39, ss. 93 and 94.

This section was added to Act I of 1879 by Act VI of 1894, section 2, and was taken from the English Stamp Act, 1891 (54 & 55, Vic. c. 39, ss. 93 and 94). Section 506 of the Merchant Shipping Act, 1894 (57 & 58, Vic. c. 60) referred to in clause (1) runs thus :—

"An insurance effected against the happening, without the owner's actual fault or privity, of any or all of the events in respect of which the liability of owners is limited under this Part of this Act shall not be invalid by reason of the nature of the risk."

This section lays down what a sea-policy must contain. A contract for sea-insurance is a different thing from a policy of sea-insurance. A document which was in the nature of a bill of lading and by which the carrying company for an increased payment undertook upon itself all risks attending goods while on board of a ship or vessel was held not to be a "policy of sea-insurance" liable to duty under the Act, but only a "contract for sea-insurance" having regard to s 2 (20) of the Act (*a*)

A policy of sea-insurance upon a ship for the period of twelve months contained the following clause :—"Should the vessel be at sea or abroad on the expiration of this policy, it is agreed to hold her covered until arrival at her port of final

(*a*) Ref. under the Stamp Act (1908), I. L. R. 30 Cal. 565.

destination . . . . at a pro rata daily premium." On the expiration of the twelve months, the ship was abroad and on her voyage home was lost. In an action upon the policy, it was held that the policy was one entire contract of insurance for a time exceeding twelve months and was consequently invalid as being in contravention of the provision of the English Act (corresponding to section 7 of this Act) and inadmissible in evidence, and that the document could not be construed as containing two separate contracts, one for voyage and one for time. But it was observed that if the loss had occurred within twelve months, the policy would have been good as a time policy for twelve months and could be given in evidence against the defendants, for it would be competent to the Court to reject the continuation clause which formed part of the contract and was not good in law, as it was a severable part of the contract (*a*).

By a document called an "open cover," the defendant with other underwriters agreed to reinsure the plaintiffs to the extent of the excess over certain amounts mentioned in the document, upon risks undertaken by them from time to time, on goods shipped by certain steamship lines therein mentioned. The limit of the excess on any one ship and the proportion of this amount taken by each underwriter were specified. Goods which were insured by the plaintiffs on a steamship of one of the lines were lost by a peril insured against, and the plaintiffs paid the insurance and sued the defendant for his proportion of the excess. It was held by the Court of First Instance that the "covering note" or "open cover" by which underwriters undertook to reinsure marine risks to be afterwards declared, was not a policy of sea-insurance within the meaning of the Stamp Act, but it was a contract for sea-insurance which, not having been expressed in a policy, was invalid and therefore no action could be maintained on it, either as a contract for sea-insurance or as a contract to issue a policy (*b*). The Court of Appeal expressed no opinion as to whether the document was a

(*a*) Royal Exchange Assurance Corporation *v.* S. J. Vega, [1901] 2 K. B. 567.

(*b*) Home Marine Insurance Co., Ld. *v.* Smith, [1898] 1 Q. B. 829.

policy of sea-insurance, and, treating it as a policy, confirmed the decision on the other point, *viz.*, that the document was a "contract for sea-insurance," as it was a contract of reinsurance in respect of excesses over certain amounts, upon risks which the plaintiffs had undertaken or might undertake on goods by certain ships and that, as it did not specify "the sum or sums insured" as required by sub-section 3 of s. 93 (corresponding to s. 7 (3) of this Act), it was invalid as a policy of sea-insurance and could not be stamped and sued on as such, nor could it be sued on as a contract to issue a policy (*a*)

The plaintiffs, an insurance company, by means of an "open cover" extending over a period of more than twelve months, reinsured with the defendant, an underwriter at Lloyd's, the risks which they had insured with respect to cargo to be carried in certain steamers during the period in question. The defendant having refused to sign the policy put forward by the plaintiffs in respect of a loss, for which they had become liable in the sum of 230*l.* under their original insurance, on the ground that the plaintiffs had not made to the defendant all the declarations that they should have made under the "open cover," it was verbally agreed that an independent person should be appointed to examine the plaintiffs' books and that, if he certified that all the declarations had been made, the defendant would sign the policy in question and would pay the 230*l.* for the loss The person appointed, after examining the plaintiffs' books, certified that all the declarations had been made, but the defendant refused to sign the policy and did not pay the 230*l.* In an action to recover 230*l.* as damages for breach of the verbal agreement, it was held that the action was not maintainable, (1) because if the defendant paid the 230*l.*, he would be paying a sum of money upon a loss relative to sea-insurance, which insurance was not expressed in a policy of sea-insurance duly stamped, and the defendant would, therefore, be liable to a penalty under s. 97 of the Stamp Act, 1891; and (2) because the verbal agreement was a contract for sea-insurance, and, not being expressed in a policy of sea-insurance,

(*a*) Home Marine Insurance Co., Ld. *v* Smith, [1893] 2 Q. B 351.

was invalid under s. 93 of the Stamp Act, 1891 (corresponding to s 7 (1) of this Act) (*a*).

Bonds, debentures or other *securities* issued on loans under Act XI of 1879

8. (1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities Loans Act, 1879, or of any other law for the time being in force, by the issue of bonds, debentures or other *securities*, shall, in respect of such loan, be chargeable with a duty of one * per centum on the total amount of the bonds, debentures or other *securities* issued by it, and such bonds, debentures or other *securities* need not be stamped and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

(2) The provisions of sub-section (1) exempting certain bonds, debentures or other *securities* from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures or other *securities* of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other *securities* shall be valid, whether the same are stamped or not:

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other *securities* from the duty chargeable in respect thereof prior to the twenty-sixth day of March, 1897, when such duty has not

(*a*) Genforsikrings Aktieselskabet (Skandinavia Reinsurance Company of Copenhagen) *v.* Da Costa, [1911] 1 K. B 187.

* The word "one" was substituted for the words "eight annas" by The Stamp (Amendment) Act, VI of 1910, s 2.

already been paid or remitted by order issued *by the Governor-General in Council.*

(3) *In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.*

Cf. Act I of 1879, s. 7 B.

The word 'securities' has been substituted for the word 'certificates' which occurred in Act I of 1879. Sub-sections 1 and 2 were added to Act I of 1879 by Act XIII of 1897.

These sub-sections provide "that the bonds or debentures issued by a local authority need not be separately stamped, either in the first instance or on renewal, sub-division, consolidation or otherwise, but all that is necessary is for the local authority concerned to pay once for all the *ad valorem* stamp duty (now one per cent.) chargeable on the total amount covered by the bonds or debentures. It is further proposed [sub-section (2)], to apply the same provisions to bonds or debentures already issued in respect of outstanding loans raised by the local authorities on the understanding that the full duty leviable under the Act as it now stands, shall have been either paid or remitted by an order issued under section 8 [now section 9 (a)]" (*a*).

This section gives facilities to local authorities for issuing debentures upon payment of composition duty and includes the exemption of transfers as well as the exemption of issues of debentures. Sub-section (3) provides for the levy of a penalty from a local authority which issues debentures without first of all paying duty. This sub-section is taken word for word from the similar provision in the English Act (*b*).

(*a*) Statement of Objects and Reasons of Act XIII of 1897.

(*b*) App. E, p. cccx.

The Presidency Municipalities, the Trustees of the Port of Bombay and the Commissioners for making improvements in the Port of Calcutta are empowered, by the enactments constituting or incorporating them, to borrow money for certain purposes by way of debentures, on the security of the rates, taxes, or dues which they are authorised to levy or impose. Under the Local Authorities Loans Act, other bodies corporate and municipalities may similarly be authorised (*a*).

"Local authority" means "a municipal committee, district board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund"—General Clauses Act, X of 1897, section 3 (28).

Power to reduce, remit, or *compound* duties.

9. The Governor-General in Council may by rule or order published in the *Gazette of India*,—

(*a*) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(*b*) *provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities*

Cf. Act I of 1879, s. 8.

Clause (a).—The power of reducing or remitting stamp duties is reserved to the Governor-General in Council only. The Local Governments have no such power. Before October 1860 instruments exempted from duty were described in the

(*a*) I.G.R., No. 3646, 18th Nov. 1880.

Stamp Regulations themselves. For the first time, in Act XXXVI of 1860, section 18, power was reserved to the Governor-General in Council to reduce or remit stamp duties on instruments by notifications in the Gazette. But under Act I of 1879, section 8, the power to reduce or remit was made retrospective as well as prospective, and it is so continued in the present Act

Notifications of the Government of India take effect from the date of their publication in the Gazette of India (*a*)

For reduction and omissions of duty under this section, *see* Appendix No I.

Clause (b).—This clause providing for the composition and consolidation of duties has been added probably with reference to the remarks of the Government of India in paragraph 5 of their Resolution No. 3646, dated 13th November 1880 (*b*).

Clause (b) of section 8 of Act I of 1879 conferring power upon the Governor-General in Council to cancel or vary his order, has been omitted, the same power being now exercisable under the provision in the General Clauses Act, X of 1897, section 21.

Exemptions under other Acts:—Under s. 25, sub-s. 1, clause (b) of the Co-operative Credit Societies Act, X of 1904, the Governor-General in Council has remitted the duties on "Instruments executed by or on behalf of any Co-operative Credit Society for the time being registered under the Co-operative Credit Societies Act, X of 1904, or instruments executed by any officer or member of any such society and relating to the business of the society" (*c*).

B.—Of Stamps and the mode of using them.

Duties how to be paid.

10. (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(*a*) Mad. B. P. No. 1680, 30th June 1882.

(*b*) I. G., 13th November 1880, Part I, p. 652. *See* App. C. p cclxiii.

(*c*) I. G. Notn. No. 6220, S. R., 30th September 1904.

(*a*) according to the provisions herein contained; or,

(*b*) when no such provision is applicable thereto—as the Governor-General in Council may by rule direct.

(2) The rules made under sub-section (1) may, among other matters, regulate,—

(*a*) in the case of each kind of instrument—the description of stamps which may be used;

(*b*) in the case of instruments stamped with impressed stamps—the number of stamps which may be used;

(*c*) in the case of *bills of exchange or promissory notes written in any Oriental language*—the size of the paper on which they are written.

Cf. Act I of 1879, s. 9.

The italicised words in clause (c) of sub-section (2) have been substituted for the word 'hundis' which occurred in section 9 of Act I of 1879. The cases in which the duty chargeable on an instrument may be paid otherwise than by stamps are the following:—

(1) When documents that are not duly stamped are impounded and assessed to duty under the provisions of Chapter IV of the Act, the duty recovered by the Court or Collector is taken in cash; and the fact of its having been paid is indicated by the endorsement of a certificate under the hand of the Court or Collector.

(2) When documents are brought to a Collector under section 31 for adjudication of duty or under section 41 with voluntary tender of duty, the payment of duty is similarly made and denoted.

(3) When the stamp duty is to be indicated by an impressed label under the rules made by the Governor-General in Council (*a*), the value of the label to be impressed must be paid in cash.

Under section 9 of Act I of 1879 (now section 10) power was given to the Governor-General in Council to provide by rules for the number of impressed stamps which might be used for stamping any instrument, and the size of the paper to be used in the case of hundis or native bills of exchange. The number of stamps to be used was to be fixed by rule instead of being fixed as had been done before Act I of 1879, by a provision of the Act itself. The provision for regulating the size of the paper to be used for hundis was designed to prevent the fraud practised by cutting off that portion of the paper stamped and supplied by Government upon which there was any writing, from time-expired hundis, and using the clear portion of the stamped paper again (*b*).

As to the rules made by the Governor-General in Council under this section, *see* Nos. 3, 4, 5, and 6, Appendix No. II.

Use of adhesive stamps.

11. The following instruments may be stamped with adhesive stamps, namely :—

(*a*) instruments chargeable with the duty of one anna *or half an anna*, except parts of bills of exchange payable otherwise than on demand and drawn in sets ;

(*b*) bills of exchange, cheques and promissory notes drawn or made out of British India ;

(*c*) entry as an advocate, vakil or attorney on the roll of a High Court ;

(*a*) See Appendix No. II.

(*b*) Proceedings of the Legislative Council, 15th January 1879, (I. G., 18th January 1879).

(*d*) notarial acts ; and

(*e*) transfers by endorsement of shares *in any incorporated company or other body corporate.*

Cf. Act I of 1879, s. 10.

The exceptions mentioned in clause (a) and clauses (c) and (d) were first introduced in Act I of 1879. The words "or half an anna" were inserted by the Stamp Act (Amendment) Act, VI of 1906, s. 3.

The Legislature has limited the use of adhesive stamps to the instruments mentioned in this section on the ground that their use in all cases, except where the stamp was to be affixed by somebody responsible to Government in some way or other, would entail great loss of revenue through fraud (*a*).

The use of the word 'may' in this section shows that it is permissive and not obligatory on any person to use the adhesive stamp. If any of the instruments therein mentioned be written on impressed stamp of proper value, it will not be held to be not duly stamped.

Clause (a).—Instruments chargeable with the duty of one anna are the following :—

(1) Acknowledgment of a debt exceeding Rs. 20. (Schedule I, Art. 1).

(2) Agreement or memorandum of agreement relating to the sale of Government security, &c. [Art. 5 (*a*)].

(3) Bill of exchange payable on demand [Art. 13 (*a*)].

(4) Certificate or other document evidencing the right or title of the holder thereof, or any other person, either to any shares, &c., in a company (Art. 19).

(5) Cheque (Art. 21).

(6) Delivery order in respect of goods (Art. 28).

(7) Letter of allotment of shares in a Company, &c. (Art. 36).

(*a*) Proceedings of the Legislative Council, 15th January 1879.

(8) Letter of credit (Art. 37).

(9) Mortgage of a crop, &c. [Art. 41 (*a*)].

(10) Note or memorandum sent by a broker or agent to his principal, intimating the purchase or sale of goods, &c. (Art. 43).

(11) Policy of insurance for or upon any voyage where the premium or consideration does not exceed the rate of two annas or one-eighth per centum of the amount insured by the policy [Art. 47 A (1) (i)].

(12) Policy of insurance against railway accident, valid for a single journey only [Art. 47 (C) (*a*)].

(13) Promissory note payable on demand (Art. 49).

(14) Proxy (Art. 52)

(15) Receipt for money, &c., exceeding Rs. 20 (Art. 53).

(16) Shipping order (Art. 60).

(17) Agreements executed for service or performance of work in a coffee plantation in the Madras Presidency, Coorg or Mysore, where the advance given under the agreement does not exceed Rs. 20 (No. 57, I.G.N., No. 785, S. R., 17th February 1899).

The Government of India has ruled that bills of exchange payable otherwise than on demand and drawn in sets when the amount of the duty for each part of the set does not exceed one anna, may be stamped with adhesive stamps (*a*). This rule appears to contradict the exception mentioned in clause (a). But the Board of Revenue, N. W. Provinces, ruled with reference to the old rule 13 similar to the present rule 12, that there was no necessary contradiction in this, nor did section 10 (a) [now 11 (a)] contain a positive general prohibition against stamping "parts of bills of exchange, &c.," with adhesive stamps and that the rule merely excluded these instruments from the operation of this particular section (*b*).

(*a*) Rule 12, I. G. N. No. 786, 17th February 1899. *See* Appendix No. II.

(*b*) From Board, N W P. to Commissioners of Stamps, No. 271/Vs-91, 1st June 1882.

An hundi payable otherwise than on demand cannot be stamped with an adhesive stamp, because the stamp required is more than one anna (*a*).

Clause (b).—The words "drawn or made out of British India" apply to the entire clause (*b*).

See for stamp rules 14 and 15 providing for the use of special adhesive stamps, Appendix II.

Cancellation of adhesive stamps.

12. (1) (*a*) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and

(*b*) Whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) *The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.*

Cf. Act I of 1879, s. 11; 54 and 55 Vic. c. 39, s. 8.

(*a*) Devaji *v.* Ramakristniah (1880), I. L. R. 2 Mad. 173. Cf. Radhakant Shaha *v.* Abhoy Churn Mitter, (1882), I. L. R. 8 Cal. 721.

(*b*) Devaji *v.* Ramakristniah, *supra*.

Sub-section (1)—Clause (a).—This applies to cases in which the instrument chargeable with duty may be stamped after execution (*a*). A receipt to the salary bill of a Government official is an instrument requiring to be stamped at or before the time of execution and not of the kind contemplated by this clause (*b*). Sections 18 and 19 provide for the stamping of certain instruments after execution.

The cancellation of the stamp apparently should be done by the person affixing it; but as it is a mere mechanical operation to prevent the stamp being used again, it will be sufficient if done by his directions, express or implied. Accordingly, the cancellation of the stamp would not be invalidated if done at the time of execution by the payee of the hundi with the authority of the drawer (*c*).

Clause (b).—This clause provides for cases in which the stamp is affixed before the instrument is executed or, (as in the case of the cheques contained in the cheque books issued by some banks to their customers) before the instrument is completely drawn up. In such cases the person first executing the instrument should cancel the same.

Sub-sections (2) and (3).—An instrument that may be stamped with an adhesive stamp is duly stamped if the stamp is affixed and cancelled at the time of execution, or, if having been at any time previously affixed, it is cancelled at the time of execution (*d*). The omission to date the stamp on a promissory note, if it is cancelled in an effectual manner, does not render the instrument one which would come within the purview of sub-section (2) of this section, so as to make it unstamped (*e*).

Cancellation.—Act I of 1879 did not prescribe any particular form of cancellation but left it doubtful how adhesive stamps ought to be cancelled. Sub-section (3) has been added to indicate

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(*a*) Queen Empress *v.* Rahat Ali Khan (1886), I.L.R. 9 All. 210.

(*b*) *Ibid.*

(*c*) Bhawanji Harbhum *v.* Devji Punja (1894), I. L. R. 29 Bom. 635, at pp. 638-9.

(*d*) Bhawanji Harbhum *v.* Devji Punja (1894), I.L.R. 19 Bom. 635.

(*e*) Kirpa Ram *v.* Baru Mal (1906), 3 A. L. J. R. 326.

a proper manner for the cancellation of such stamps and point out as a guide how the cancellation may be effected. The one method of cancellation indicated in this sub-section is directory only and not intended to exclude other effective modes of cancellation (*a*). "It is not possible to lay down any general rule as to what mode of cancellation could be effective. The Legislature has abstained from doing so and perhaps it is as well that judges should do the same" (*b*). This sub-section is similar to the provision contained in section 8 of the English Stamp Act, 1891, and restores with modifications the provisions contained in sections 6 and 8 of the Stamp Acts of 1860 and 1862 respectively.

In a case where the adhesive stamp affixed to a document was without any mark of cancellation, except a small part of the first letter of the executant's signature consisting of a slightly curved line, it was held that whatever might have been intended by the small ink line upon the right side of the stamp, it did not effect such a cancellation of the stamp as is prescribed by this section and that the document was unstamped (*c*). The mere drawing of two parallel lines without more over a receipt stamp affixed to an instrument was held not to have the effect of cancelling it, "so that it cannot be used again" within the meaning of this section(*d*). Where some blue pencil lines were "drawn over to the stamp", it was held that this was not an effective mode of cancellation (*e*). An adhesive stamp is cancelled in an effectual manner by the executant writing his name on and across the stamp, so that it cannot be used again (*f*).

See notes to sections 2 (12), 18, 19, 47, and 63.

(*a*) App. E, pp. cccii and cccx. *See* Virbhadrapa *v.* Bhimaji (1904), I.L.R. 28 Bom. 433.

(*b*) Solamalai Mudaliar *v.* Vadamalai Muthiran (1912), 23 M. L. J. R. 273.

(*c*) S. A. Ralli *v.* Caramalli Fazal (1890), I. L. R. 14 Bom. 102.

(*d*) Virbhadrapa *v.* Bhimaji (1904), I. L. R. 28 Bom. 432; *see* Anandrao *v.* Davlatrao, (1888) Bom. P. J. 361.

(*e*) Solamalai Mudaliar *v.* Vadamalai Muthiran (1912), 23 M. L. J. R, 273.

(*f*) Kirpa Ram *v.* Baru Mal (1906), 3 A. L. J. R. 826.

Instruments stamped with impressed stamps how to be written.

13. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

Cf. Act I of 1879, s. 12; 54 and 55 Vic. c. 39, s. 3 (1).

This section was first enacted by Act I of 1879 and is confined to impressed stamps, "as it has been represented that inconvenience would arise from its being applied to cheques, which are very commonly stamped by affixing an adhesive stamp to the back." (*a*).

S. 15 provides that every instrument written in contravention of the provisions of this section shall be deemed to be unstamped.

Face of the instrument.— The Government of India ruled that an instrument to be considered as duly stamped within the meaning of this section should be written and commenced on the side of the paper on which the stamp is impressed, and prohibited the writing on the reverse of an impressed stamp paper (*b*). The High Court of Bombay questioned the validity of the above rule and decided that a document commenced on the side other than that on which the stamp was impressed and terminated on the side impressed with the stamp was duly stamped, not being open to objection under the two next sections of the Act (*c*). In this case, Westropp, C. J., said :—

"The 12th section of Act I of 1879 (now 13th) does not say that the instrument must commence on the side on which the stamp is impressed or that only one side must be written upon.....This section like section 11 (now section 12) seems to contemplate two objects:—(1) that the stamp should not be defaced or made illegible; (2) that the writing should not be

(*a*) Final Report of the Select Committee, para. 8, 31st Dec. 1878.

(*b*) I. G. letter, 26th July 1879, No. 1857; Bom. G. N. No. 6197 (Rev.), 23rd Nov. 1880.

(*c*) Dowlatram Harji *v.* Vitho Radhoji (1880), I.L.R. 5 Bom. 188.

so distant from the stamp as to admit of its being used again for another instrument, for instance, by cutting off the part of the paper previously written upon and writing a fresh instrument upon the portion left blank."

After this decision, the said prohibition of the writing on the reverse side was withdrawn by the Government of India and they remarked that there was nothing in the law to vitiate an instrument partly written on the reverse side of an impressed stamp paper and that the section required the stamp to appear on the face of the instrument, so that it was necessary that part of the instrument should be written on the side of the paper which bore the stamp impression (*a*).

Sometime afterwards, the Government of India published stamp rule 5 (e)—rule 6 (2) of the present rules—authorising parties to use plain papers in addition to the stamp paper where the whole of the instrument cannot be written on the side of the stamp paper which bears the stamp (*b*). With reference to this rule, the Madras High Court held that it was an enabling rule and did not prohibit writing on the reverse side (*c*). Nor does this rule prohibit writing on the reverse side of a sheet of stamped paper endorsements by stamp vendors or by Civil Courts on documents presented to such Courts as exhibits (*d*).

Where five distinct instruments were written on one parchment stamped sufficiently for only one of those instruments, and several other stamped parchments were annexed to the first parchment sufficient to cover the other four instruments, but no part of them was engrossed upon the additional parchments, it was held that they were not duly stamped under the corresponding provision in the English law as the parchments could be used for other instruments (*e*).

See notes to sections 2 (11) and 15.

(*a*) I.G. letter, No. 917, 28th Feb. 1881, recorded in Bom. G.O. No. 1418 (Rev.), 9th March 1881.

(*b*) I.G.N. No. 1288, 3rd March 1882; *see* App. No. II.

(*c*) Ref. (1883), I.L.R. 7 Mad. 176; Mad. B. P. No, 137, 27th Jan. 1883.

(*d*) I. G. letter No. 1137, 12th March 1881, recorded in Bom. G. O. No. 1718 (Rev.), 24th March 1881.

(*e*) Rex. *v.* Reeks (1727), 2 Str. 716.

Only one instrument to be on same stamp.

14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written :

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Cf. Act I of 1879, s. 13.

This section was first enacted by Act I of 1879.

Where in a bond engrossed on a stamp paper of sufficient value, the contract of the principal was first written, and below his signature the contract of the surety was written and signed by him, it was held that the bond constituted only one instrument and was not open to objection under this section (*a*).

An endorsement which requires to be stamped cannot be written on a stamped paper on which a document has been executed. So, the endorsement of transfer written on a simple money bond, being chargeable with duty, was held to be unstamped, being written in contravention of this section, and it was held that it could also be stamped under section 34 (now 35) of the Act and then admitted in evidence (*b*),

Where a widow, a few days before she adopted C, executed a document on a plain paper granting B an annuity charged on the revenues of a village and the adopted son afterwards made

(*a*) Dowlatram Harji *v.* Vitho Radhoji (1880), I. L. R. 5 Bom. 188 : Mad. B. P. No 3018, 6th Dec. 1882.

(*b*) Pralhad Lakshmanrav Nikane *v.* Vithu (1892), I. L. R. 17 Bom. 687, impliedly overruling *In the matter of Hanmapa* (1888), I. L. R. 13 Bom. 281.

the following endorsement on the document—"I consent to act according to this sannad"—it was held that the gift by the widow having failed by reason of her adopting C., the endorsement on the document by C. would constitute an instrument of gift by him to B. and that the document should be stamped with a single stamp as an instrument of gift (*a*).

Section 15 renders the second instrument only not duly stamped. Therefore, where a deed of release endorsed on a deed of conveyance sufficiently stamped was unstamped, it was held that the conveyance was valid, notwithstanding the release being written on the back; and that the release could be validated under section 39 (now 42) on payment of the deficient stamp duty and penalty (*b*).

Proviso.—This proviso exempts certain endorsements from the operation of the rule which prohibits the writing of a second instrument on the same piece of stamped paper. The proviso must not be construed as exempting an endorsement chargeable with duty when the instrument itself upon which the endorsement is made is exempt from duty.

Instrument written contrary to section 13 or 14 deemed unstamped.

15. Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped

Cf. Act I of 1879, s. 14.

This section was first enacted by Act I of 1879.

The effect of the definition of the term 'duly stamped' when applied to sections 13 and 14 is to invalidate all instruments in respect of which the rules laid down by these sections have been violated. Sections 13 and 14 are the only two cases mentioned in the Act in which, though the proper amount of duty has been paid, yet the instruments are to be held not duly stamped (*c*). But such second instrument may be validated

(*a*) *In re* Bhavanibai (1883), I. L. R. 7 Bom. 194.

(*b*) Ref. (1887), I. L. R., 11 Mad. 40.

(*c*) Ref. (1885), I. L. R. 8 Mad. 532, at p. 530.

under the provisions of Chapter IV on payment of duty and penalty (*a*).

Any hardship which might arise from the application of this section by the executant of the second instrument having to pay duty and penalty will be effectually prevented by the provisions of sections 39 and 40 of Chapter IV empowering the Collector to remit the penalty in such cases and by the provision for an allowance of the value of the stamp in section 52 (*b*)

See notes to sections 13 and 14, above.

Denoting duty.

16. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument *by endorsement under the hand of the Collector or* in such *other* manner (*if any*) as the Governor-General in Council may by rule prescribe.

Cf. Act I of 1879, s. 15; 54 and 55, Vic Ch 39, s. 11.

This section was first enacted by Act I of 1879. The italicised words in this section were contained in Rule 16, Government of India Notification, No. 2170, 21st May 1891, and have now been inserted in this section

In the case of certain instruments, as for instance, instruments coming under section 4, Article 25 and provisos to Articles 35, 45 and 58 in the Schedule, the duty with which they are chargeable depends on the duty actually paid in respect of the principal instrument In these cases, if it is

(*a*) Ref. (1887), I. L. R. 11 Mad. 40; Pralhad Lakshmanrav Nikane *v.* Vithu (1892), I. L. R. 17 Bom. 687. Preliminary Report of the Select Committee, para 16, August 1878.

(*b*) Final Report of the Select Committee, para 11, 31st Dec 1878.

not possible to produce the principal or original instrument along with the subordinate or duplicate instrument, the fact of the payment of the duty on the former not being apparent, the latter will be impounded and treated as the principal instrument and duty levied accordingly, unless the party can prove such payment.

Collector—All Sub-Collectors, Head Assistant Collectors and Deputy Collectors in charge of Divisions, in the Madras Presidency, have been appointed to be Collectors, in respect of the powers conferred under this section within the limits of their respective jurisdictions (*a*), and all Registering officers appointed under Act III of 1877 (XVI of 1908) have been invested with the powers of a Collector under this section (*b*).

In Bengal, all Deputy Collectors in charge of sub-divisions; Senior Deputy Collectors at the Sudder stations of districts; Rural Sub-Registrars; all officers holding temporary charge of sub-registry offices at such divisions during the absence of the Sub-divisional officers; and Special Sub-Registrars at district head-quarters have been invested with the powers of a Collector under this section (*c*).

C.—Of the time of stamping Instruments.

17. All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution.

Instruments executed in British India.

Cf. Act I of 1879, s. 16; 54 & 55, vic c. 39, s. 15 (1).

This section was first enacted by Act I of 1879.

This section lays down that instruments chargeable with duty and executed in British India shall be stamped before or at the time of execution. The next two sections state the

(*a*) Notification No. 511, 20th November 1899.

(*b*) Ibid.

(*c*) Bengal Notifications, dated 17th June 1879, 20th Nov. 1879 and 23rd Oct. 1880, Bengal Stamp Manual, p. 209.

circumstances under which instruments chargeable with duty and executed out of British India may be stamped after execution. Provision is made in Chapters III and IV for all instruments except instruments chargeable with a duty of one anna, bills of exchange and promissory notes, being stamped after execution on payment of duty under certain conditions or of both duty and penalty. Section 47 gives power to the payee of a bill, note or cheque to affix the stamp after execution.

Execution.—There was no definition of the term "execution" in Act I of 1879. When applied to a document, the term "execution" was interpreted to be the last act or series of acts which completes it (*a*). So it was held that a contract on a negotiable instrument until delivery was incomplete and revocable, and that if at the time of delivery (which formally completed its legal character) a hundi was stamped and if the cancellation took place at that time as part of the same transaction, it was sufficient (*b*). But the present Act has not adopted the above wide definition of the term "execution" and has restricted its meaning to "signature." So, under this Act, a hundi which is stamped only at the time of delivery and not at the time of execution may not be considered to be duly stamped. Where a promissory note was signed first and the stamp was affixed and cancelled after signature, the acts being practically simultaneous, or being continuous acts in the same transaction, it was held that the instrument was stamped at the time of execution within the meaning of this section (*c*).

A bill drawn in British India upon a person outside it ought to be stamped in accordance with this section (*d*).

The signature of the Registrar of the High Court to a final order by the Court in partition suits does not amount to execution within the meaning of this section (*e*).

(*a*) Bhawanji Harbhum *v.* Devji Punja (1894), I.L.R. 19 Bom. 635. See section 2 (12) *ante*, p. 67.

(*b*) Ibid.

(*c*) Suraj Mull. *v.* Hudson (1900), I.L.R. 24 Mad. 259.

(*d*) Ramasami Chetti *v.* Ramasami Chetti (1892), I.L.R. 5 Mad. 220.

(*e*) Advocate-General's opinion enclosed in letter No. 2015, dated 13th Nov. 1907 from the Solicitor so the Government of India; Bengal Stamp manual, p. 91.

Evidence as to date of execution.

Since a document is considered duly stamped only when, besides bearing a sufficient stamp, it is stamped in the *manner* required by law, and the law as laid down in this section requires a document to be stamped at or before the time of execution, evidence may be given as to the time when the stamp was affixed, though it may bear the necessary stamp at the time that it is presented in Court, and the Court is bound to take such evidence and decide whether the instrument was duly stamped (*a*). So, where a deed purporting to appoint a new trustee appeared, when tendered in evidence to be sufficiently stamped according to the law in force on the day when it was dated, but it was proved to have been executed some years previously, and the stamp according to the law then in force was insufficient, it was held that evidence of the date of actual execution was admissible and that the document could not be admitted in evidence owing to insufficiency of stamp (*b*). The onus of proving any irregularity in the execution or stamping of an instrument lies on the party who takes the objection (*c*)

Acts XXXVI of 1860 and X of 1862 contained a provision corresponding to this section. But Act XVIII of 1869 contained no provision as to the time of execution and section 18 of the Act provided only that the instrument should bear a stamp of a value not less than the amount of the proper duty in order to be admissible in evidence. Accordingly it was held that the Court had to see only whether it bore a proper stamp at the time when it was tendered and it was no business of the Court to see at what time the stamp was affixed and that it was sufficient if at the time of its being tendered it bore the requisite stamp, even though the stamp was affixed subsequently to the execution of the document (*d*). This decision would seem to apply to documents executed while Act XVIII of 1869 was in force which may be now tendered in evidence, and such documents though

(*a*) Jeshibai *v.* Ramchandra Narottam (1889) I.L.R. 13 Bom. 484.

(*b*) Clark *v.* Roche (1877), 3 Q.B.D., 170.

(*c*) Waddington *v.* Francis (1804) 5 Esp. 182.

(*d*) Kali Churn Das *v.* Nobo Kristo Pal (1881), 9 C L.R. 272; Sreemutti Noor Bibee *v* Shaikh Ramzan (1875), 24 Suth. W. R. 198; Bhauram Madan Gopal *v* Ram Narain Gopal (1875), 12 Bom. H C. R. O C., 208.

stamped subsequently to execution, may be admitted in evidence provided they were so stamped before being tendered.

See notes to ss. 2 (12) and 35.

Instruments other than bills, cheques and notes executed out of British India.

18. (1) Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque or promissory note, may be stamped within three months after it has been first received in British India.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the Governor-General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Cf. Act I of 1879, s. 17, 54 & 55 vic. c. 39, s. 15 (2), (3).

This section deals with instruments other than bills, cheques and notes executed out of British India. Bills, cheques and notes excepted by this section are dealt with in the next section.

The Stamps Acts XXXVI of 1860 and X of 1862 contained no provision for stamping documents executed out of British India, except bills of exchange. So, where an unstamped document comprising an assignment of the executant's interest under a will, and also a power of attorney executed in Australia on the 26th May 1862 was sought to be used in 1890 at Madras, it was held that the document as not chargeable either under Act XXXVI of 1860 or Act X of 1862 with stamp duty and consequently no penalty could be levied under Act I of 1879. (*a*)

(*a*) Ref. (1890), I. L. R., 14 Mad. 255.

Documents properly stamped according to the law in force in Berar do not require to be stamped again in British India, nor do documents properly stamped in British India require to be stamped again in Berar (*a*).

Instruments (other than instruments which under section 11 of the Act may be stamped with adhesive stamps) executed out of British India and requiring to be stamped after their receipt in British India must be stamped with impressed labels (*b*). The procedure for impressing labels is laid down in Stamp Rules 10 and 11 (2) (*c*).

Under this section a Collector is bound to affix such stamp as may be required and paid for by the party presenting the instrument and it is not his province to tender gratuitous advice, nor is it competent for him to determine the proper stamp duty (*d*), but if the party applies to have his opinion as to the proper stamp duty, the Collector must act under section 31. Where, however, an instrument executed out of British India is brought to the Collector after the expiry of the 3 months allowed by this section, the Collector may, if he is satisfied that the omission to stamp it has been occasioned by accident, mistake or urgent necessity proceed under sections 41 and 42 to validate it (*e*).

Bills, cheques and notes drawn out of British India.

19. The first holder in British India of any bill of exchange, cheque or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in British India, affix thereto the proper stamp and cancel the same:

Provided that,—

(*a*) if, at the time any such bill of exchange, cheque or note comes into the hands of any

(*a*) *See* notes at p. 66, above.

(*b*) Stamp Rule 11 (1), Appendix No. II.

(*c*) *See* Appendix No. II.

(*d*) Mad. B. P. No. 975. 16th July 1880

(*e*) Mad. B. P. No. 1420, 1st June 1882.

holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12 and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled.

(*b*) Nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

Cf Act I of 1879, s. 18; 54 & 55 Vic ch 39, s 35

The wording of the first paragraph of this section follows that of section 35 (1) of the English Stamp Act, 1891, with the exception of the word "acceptance" which does not occur in the English Act. This section requires that the holder in British India of a foreign bill, cheque or note should stamp it if he presents the same for acceptance or payment, or does any one of the other things mentioned in this section. If a person has not done any of these things with respect to such foreign instrument, a suit is maintainable upon it without its being stamped, there being no provision of law which requires a promissory note executed out of British India to be stamped before it is sued on or used in court (*a*) 'Presentment for payment means presentment according to the custom of merchants, not a mere demand unaccompanied by the presentation of the bill or note (*b*). Presentment for acceptance does not amount to negotiation (*c*)

(*a*) Mahomed Rowthun *v* Mahomed Hussain Rowthan (1899), I L R. 22 Mad, 337; Griffin *v*. Weatherby (1868) L. R., 3 Q. B., 753.

(*b*) Griffin *v* Weatherby, *supra*

(*c*) Griffin *v* Weatherby, *supra*; Sharples *v* Rickard (1857), 26 L J Ex. 302